NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES

PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 1:00 p.m. on Wednesday, June 6, 2007, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before June 5, 2007, or may be submitted at the hearing on June 6, 2007. Comments may be e-mailed to the Committee on or before June 5, 2007, at:

rulescomment@courts.state.nh.us

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H. Supreme Court

Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 271-2646). In addition, the changes being considered are available on the Internet at:

http://www.courts.state.nh.us/committees/adviscommrules/index.htm

The changes being considered concern the following rules:

I. Rules of Civil Procedure

1. Adopt new Civil Procedure Rules as set forth in Appendix A.

2. Repeal Superior Court Rules 1 to 89, 95, 102-A, 109 to 111, 113 to 171, Rules and Procedures to Implement Attachment Law (RSA 511-A), and the Preface to the Superior Court Rules.

3. Repeal District Court Rules 1.1 to 1.2, all portions of Rule 1.3 except 1.3H, 1.3-A to 1.24, and 3.1 to 3.27.

II. Rules of Probate Administration

1. Adopt new Rules of Probate Administration (Appendix B).

2. Repeal Probate Court Rules 1 to 164, and the Preface to the Probate Court Rules.

III. Supreme Court Rules

1. Amend the definition of "mandatory appeal" in Supreme Court Rule 3 as set forth in Appendix C.

2. Adopt on a permanent basis the temporary amendments to Supreme Court Rule 37, regarding the attorney discipline office, that were adopted by Supreme Court order dated January 18, 2007, as set forth in Appendices D to H.

3. Adopt on a permanent basis the temporary amendments to Supreme Court Rule 37A, regarding the rules and procedures of the attorney discipline office, that were adopted by Supreme Court orders dated January 18, 2007, and February 15, 2007, as set forth in Appendices I to O.

IV. Superior Court Rules

1. Adopt on a permanent basis Superior Court Rule 61-B, regarding late reports by guardians ad litem, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix P.

2. Adopt on a permanent basis Superior Court Rule 169-A, regarding access to confidential court records, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix Q.

3. Amend Superior Court Rule 170, regarding alternative dispute resolution, as set forth in Appendix R.

4. Amend Superior Court Rule 170-A, regarding arbitration by agreement, as set forth in Appendix S.

5. Amend Superior Court Rule 185, regarding answers and cross-petitions in domestic relations cases, as set forth in Appendix T.

V. District Court Rules

1. Adopt on a permanent basis District Court Rule 1.25, regarding late reports by guardians ad litem, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix U.

2. Adopt on a permanent basis District Court Rule 1.26, regarding access to confidential court records, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix V.

VI. Probate Court Rules

1. Adopt on a permanent basis Probate Court Rule 61-B, regarding late reports by guardians ad litem, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix W.

2. Adopt on a permanent basis Probate Court Rule 169-A, regarding access to confidential court records, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix X.

VII. Family Division Rules

1. Adopt on a permanent basis Family Division (General) Rule 12, regarding late reports by guardians ad litem, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix Y.

2. Adopt on a permanent basis Family Division (General) Rule 13, regarding access to confidential court records, which was adopted on a temporary basis by Supreme Court order dated January 18, 2007, as set forth in Appendix Z.

VIII. Rules of Evidence

1. Amend Evidence Rule 609, regarding impeachment by evidence of conviction of crime, as set forth in Appendix AA.

IX. Rules Governing *Pro Hac Vice* Appearances

1. Amend Supreme Court Rule 33, regarding nonmembers of the New Hampshire Bar, as set forth in Appendix BB.

2. Amend Superior Court Rule 19, regarding nonmembers of the New Hampshire Bar, as set forth in Appendix CC.

3. Amend District Court Rule 1.3C, regarding nonmembers of the New Hampshire Bar, as set forth in Appendix DD.

4. Amend Probate Court Rule 19, regarding nonmembers of the New Hampshire Bar, as set forth in Appendix EE.

New Hampshire Supreme Court
Advisory Committee on Rules

By: Linda S. Dalianis, Chairperson
and David S. Peck, Secretary

April 18, 2007

APPENDIX A

Adopt new Rules of Civil Procedure as follows:

New Hampshire Rules of Civil Procedure

These rules are adopted by the New Hampshire Supreme Court pursuant to the authority established in Part II, Article 73-A of the New Hampshire Constitution. They take effect on _____, and apply to civil actions filed or pending on that date.

TABLE OF CONTENTS

I. General Principles

RULE 1. Scope, Purpose, Enforcement, Waiver and Substantial Rights

(a) These rules govern the procedure in New Hampshire superior, probate, and district courts in all suits of a civil nature whether considered cases at law or in equity, with the exception of the following: small claims actions, landlord and tenant disputes, and family law disputes subject to rules that govern procedures in the Family Division.

(b) The rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action.

(c) Upon the violation of any of these rules, the court may take such action as justice requires, which action may include, without limitation, the imposition of monetary sanctions against either counsel or a party, fines to be paid to the court, and reasonable attorney's fees and costs to be paid to the opposing party.

(d) As good cause appears and as justice may require, the court may waive the application of any rule.

(e) A plain error that affects substantial rights may be considered and corrected by the court of its own initiative or on the motion of any party.

Source

(a) New
(b) New. Derived from Rule 1, Fed.R.Civ.P.
(c) Superior Court Preface
(d) Superior Court Preface
(e) Superior Court Rule 102-A (modified)

Comments

(a) These rules have been drafted to apply to civil proceedings in all three trial courts (superior, district and probate). A court may deviate from or modify a rule as justice requires.

(e) The language in Rule 1(e) is taken from Superior Court Rule 102-A which reads as follows: "A plain error that affects substantial rights may be considered even though it was not brought to the court's attention."

RULE 2. Computation of Time

In computing any period of time prescribed or allowed by these rules, by order of court, or by applicable law, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, or a legal holiday as specified in RSA ch. 288, as amended.

Source

Superior Court Rule 12

RULE 3. Filing and Service

(a) Copies of all pleadings filed and communications addressed to the court shall be furnished to all other counsel or to the opposing party if appearing pro se on the same day as the pleadings and communications are filed with the court.

(b) When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications addressed to the court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 15(e), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

(c) A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings, through the court. At the request of the party filing the pleading, the court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel, when both parties are represented.

(d) Papers shall not be withdrawn from the court files except by leave of court and upon the filing of a receipt therefor.

Source

(a) Superior Court Rule 21
(b) Superior Court Rule 21
(c) Superior Court Rule 21
(d) Superior Court Rule 56

II. Commencement of Action

RULE 4. Preliminary Process

(a) There shall be one form of action to be known as "civil action."

(b) A civil action, including an action authorized by law to be initiated by writ or petition, is commenced by filing a Complaint with the court. For purposes of complying with the statute of limitations, an action shall be deemed commenced on the date the Complaint is filed.

(c) Upon receipt of the Complaint, civil cover sheet, and filing fee, the court will issue a Summons. The Summons will identify two dates: (i) the date the Complaint is filed, and (ii) the date plaintiff selects to file proof of service of the Complaint on the defendant (the Return Date). Plaintiff will cause the Summons together with a copy of the Complaint to be served on defendant at least 14 days before the return date, service to be made as specified at RSA 510.

(d) In all cases of notice by publication where the time may be fixed by the Court, the order shall be for publication in some paper or papers named by the court in general or special orders, once a week for 3 successive weeks.

(e) Appearances and Answers (or Special Appearances and Motions to Dismiss) are due within 30 days after the Return Date.

Source

(a) New. Rule 4(a) eliminates the distinction between actions at law and actions in equity. It is styled after Rule 2, Fed.R.Civ.P. The elimination of the two forms of action is not intended to eliminate or change any remedy currently available through the courts.
(b) New first sentence. Second sentence: Superior Court Rule 2 (modified to be consistent with use of complaint rather than writ).
(c) Superior Court Rules 2 and 3 (amended).
(d) Superior Court Rule 128 (modified).
(e) New; consistent with existing practice.

Comments

(c) The second sentence is taken from Superior Court Rule 128 which has been modified to remove the final clause ("the last publication to be not less than fourteen (14) days before the return day") for two reasons. First, these rules eliminate the concept of a return date. Second, since a court order is required for service by publication, the court in any case can identify any appropriate deadline.

RULE 5. Structuring Conference

(a) The court may schedule a Structuring Conference for any case, to establish discovery and trial schedules and discuss any other issues involved in processing of the case.

(b) Ten days prior to the Structuring Conference the parties shall submit a Scheduling Statement identifying proposals for discovery deadlines and a trial schedule. The Scheduling Statement shall make note of any disagreements by counsel about scheduling so that the court can resolve the matter expeditiously. At the same time, all parties shall file summary statements to advise the court of the nature of the claims, defenses, and legal issues likely to arise. Summary statements are not admissible at trial.

(c) Following the Structuring Conference, the court will issue an Order identifying discovery and trial schedules.

Source

New. This rule codifies existing procedure. It is a simplification of a rule proposed to the Supreme Court Advisory Committee on Rules, and now being circulated for notice-and-comment.

III. Pleadings and Motions

RULE 6. Pleadings Defined

(a) There shall be allowed a Complaint and an Answer; an Answer to a Counterclaim denominated as such; an Answer to a cross-claim, if the Answer contains a cross-claim; a Third-Party Complaint, if a person who was not an original party is summoned to appear in an action; and a Third-Party Answer, if a Third-Party Complaint is served. No other pleading shall be allowed, except that the Court may allow a Reply to an Answer or a Third-Party Answer.

(b) Demurrers, Pleas, and Exceptions for insufficiency of a pleading shall not be used.

Source

(a) Rule 7(a), Fed.R.Civ.P.
(b) Rule 7(c), Fed.R.Civ.P.

Comment

Rule 6(a) is part of the restructuring of the civil rules intended to eliminate the distinction between law and equity.

RULE 7. Form of Pleadings and Motions

(a) All pleadings and motions shall set forth the factual allegations in numbered paragraphs.

(b) All pleadings, motions, and the Appearance and Withdrawal of counsel shall be signed by the attorney of record, authorized non-attorney representative, or by a pro se party. Names, street addresses and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney, non-attorney representative, or pro se party will be heard until his/her Appearance is so entered.

(c) The signature of an attorney, non-attorney representative, or pro se party to a pleading or motion constitutes a certificate by him/her that s/he has read the pleading; that to the best of his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed, or is signed with an intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

(d) No attorney, non-attorney representative or party to litigation shall directly address himself by pleading or motion to any judge but shall file such pleading or motion with the clerk or register.

(e) The court may in all cases order any party to plead and to file a statement in sufficient detail to give the adverse party and the court reasonable knowledge of the nature and grounds of the action or defense.

Source

(a) Superior Court Rule 121
(b) Superior Court Rule 15(a)
(c) Superior Court Rule 15(b)
(d) Superior Court Rule 6
(e) Superior Court Rule 29

RULE 8. Complaint

(a) All Complaints shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment sought.

(b) Relief in the alternative or of several different types may be demanded.

(c) A plaintiff entitled to a trial by jury and desiring a trial by jury shall so indicate upon the Complaint at the time of filing or if there is a counterclaim at the time plaintiff files an Answer to such counterclaim. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the plaintiff thereof.

(d) Plaintiff shall submit to the Court at the time the Complaint is filed the appropriate filing fee, as detailed in Section XI of these rules.

Source

(a) Rule 8(a), Fed.R.Civ. P. (modified)
(b) Rule 8(a), Fed.R.Civ. P. (modified)
(c) Superior Court Rule 8
(d) Superior Court Rule 3

RULE 9. Answer

(a) Answers shall be filed within 30 days after the Return Date, unless defendant files a Motion to Dismiss within that time period. If a Motion to Dismiss is submitted and denied, an Answer will be required within 20 days after the date on the Notice of the Decision denying the motion.

(b) Answers to a pleading shall (i) state in short and plain terms the defenses to each claim asserted, and (ii) admit or deny or otherwise respond to each factual allegation.

(c) To preserve the right to a jury trial, a defendant entitled to a trial by jury must indicate his/her request for a jury trial upon the Answer at the time of filing. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the defendant thereof.

(d) The defendant, in answering the allegations in the Complaint shall not do so evasively but shall answer fully and specifically every material allegation in the Complaint and set out his defense to each claim asserted by the Complaint. If the defendant is without knowledge to any particular facts, s/he shall so state and this will be treated as a denial. The Answer of the defendant may state as many defenses as the defendant deems essential to his/her defense. The defendant may allege any new or special matter in his/her Answer with a demand for relief. An Answer, to the effect that an allegation is neither admitted nor denied, will be deemed an admission. All facts well alleged in the Complaint, and not denied or explained in the Answer, will be held to be admitted.

(e) Failure to plead as affirmative defenses and file a Motion to Dismiss based on the statute of limitations, lack of personal jurisdiction, and/or improper venue within the time allowed in subsection a of this rule will constitute waiver of such defenses.

(f) The Answer to an Amended Complaint must be filed within 20 days after an amended Complaint is filed.

Source

(a) Superior Court Rules 14 and 131 (modified).
(b) Rule 8(b), Fed.R.Civ.P.
(c) Superior Court Rule 8
(d) Superior Court Rule 133
(e) Superior Court Rule 28
(f) Superior Court Rule 131 (modified)

Comment

Answers are to comply with statutory requirements that pertain to brief statements of defense. *See* RSA 515:3, 524:2, 565:7, and 547-C:10.

RULE 10. Counterclaims, Cross-claims and Third-Party Claims

(a) A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(b) A pleading may state as a cross-claim any claim by one party against a co-party which arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim therein.

(c) Unless otherwise provided by law, whenever a third party may be liable to a defendant in any pending action for any of the plaintiff's claim against said defendant or if said defendant may have a claim against a third party, said defendant may bring an action against said third party and, unless otherwise ordered on motion of any party, such action will be consolidated for trial with the pending action or, if justice requires, said third party may be made a party to the pending action, for the purpose of being bound by the determination of any common issues. However, except for good cause shown to prevent injustice and upon such terms as the court may order, no such action will be consolidated with or said third party joined in said pending action, unless suit is brought against said third party within 60 days following filing of the defendant's Answer in said pending action.

(d) A third party against whom an action is brought in accordance with this rule and a plaintiff against whom a counterclaim has been filed may, under the same circumstances prescribed by this rule, use the same procedure with respect to another person and the same time limitation shall apply, except that as to a plaintiff the sixty days will begin to run on the date the counterclaim is filed.

(e) This rule shall not be construed to limit or abridge in any way the existing common law practice of joining parties in pending actions whenever justice and convenience require, or the giving of notice to third parties to come in and defend any pending action or be bound by the outcome thereof.

(f) This rule does not apply to a defendant who contends that a third party is solely liable to the plaintiff or by a defendant in a tort action as to a possible joint tortfeasor against whom said defendant has no right to contribution or reimbursement.

Source

(a) Rule 13(a), Fed.R.Civ.P. The language from this federal rule is consistent with existing New Hampshire practice.

(b) Rule 13(g), Fed.R.Civ.P. The language from this federal rule is consistent with existing New Hampshire practice.

(c) Superior Court Rule 27 (Modified: consistent with current Superior Court practice). This rule does not apply to contribution claims which are governed by RSA 507:7-e, f and g.

(d) Superior Court Rule 27

(e) Superior Court Rule 27

(f) Superior Court Rule 27

(g) Superior Court Rule 27

RULE 11. Motions - General

(a) A request for court order must be made by motion which must (i) be in writing unless made during a hearing or trial, (ii) state with particularity the grounds for seeking the order, and (iii) state the relief sought.

(b) The Court will not hear any motion grounded upon facts, unless such facts are verified by affidavit, or are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties, their attorneys, or non-attorney representatives; and the same rule will be applied as to all facts relied on in opposing any motion.

(c) Any party filing a motion shall certify to the court that s/he has made a good faith attempt to obtain concurrence in the relief sought, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

(d) The court may assess reasonable costs, including reasonable counsel fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion.

Source

(a) New, derived from Rule 7(b)(1), Fed.R.Civ.P. The language from this federal rule is consistent with existing New Hampshire practice.
(b) Superior Court Rule 57
(c) Superior Court Rule 57-A
(d) Superior Court Rule 59

Comments

Motions relating to discovery are addressed in section V of these rules.

RULE 12. Motions – Specific

(a) *Motions to Amend.*

(i) No plaintiff shall have leave to amend a pleading, unless in matters of form, after a default, until the defendant has been provided with notice and an opportunity to be heard, to show cause why the amendment should not be allowed.

(ii) Amendments in matters of form will be allowed or ordered, as of course, on motion; but, if the defect or want of form be shown by the adverse party, the order to amend will be made on such terms as justice may require.

(iii) Amendments in matters of substance may be made on such terms as justice may require.

(iv) Amendments may be made to the Complaint or Answer upon the order of the court, at any time and on such terms as may be imposed.

Source

(i) Superior Court Rule 24
(ii) Superior Court Rule 25
(iii) Superior Court Rule 26
(iv) Superior Court Rule 135

(b) *Motions to Consolidate.* Whenever a Motion is filed in any county requesting the transfer of an action there pending to another county for trial with an action there pending, arising out of the same transaction or event or involving common issues of law, and/or fact, the court may, after notice to all parties in all such pending actions and hearing, make such order for consolidation in any one of such counties in which such actions are pending, as justice and convenience requires.

Source

Superior Court Rule 113

(c) *Motions to Continue.*

(i) Continuances shall be granted upon such terms as the court may order, in the interest of justice.

(ii) All motions for continuance or postponement shall be signed and dated by the attorney, non-attorney representative, or pro se party filing such motion. Any other party wishing to join in any such motion shall also do so in writing. Each such motion shall contain a certificate by the attorney, non-attorney representative, or pro se party filing such motion that the party so filing the motion has been notified of the reasons for the continuance or postponement, has assented thereto either orally or in writing, and has been forwarded a copy of the motion.

(iii) Where a trial has been scheduled in one case prior to the scheduling of another matter in another court, or elsewhere, where an attorney, non-attorney representative or pro se party has a conflict in date and time, the case first scheduled shall not be subject to a continuance because of the subsequently scheduled matter which is in conflict as to time and date except as follows:

(A) A subsequently scheduled case involving trial by jury in a District, Superior, or Federal District Court, or argument before the Supreme Court.

(B) Unusual circumstances causing the respective courts to agree that an order of precedence other than the above shall take place.

Source

(i) Superior Court Rule 48
(ii) Superior Court Rule 49
(iii) Superior Court Rule 49-A

(d) *Motions to Dismiss***.** Upon request of a party, hearings on motions to dismiss shall be scheduled as soon as practicable, but no later than 30 days prior to the date set for trial on the merits, unless the court shall otherwise order in the exercise of his discretion. All parties shall be prepared, at any such hearing, to present all necessary arguments.

Source

Superior Court Rule 58 (modified)

(e) *Motions to Reconsider*. A Motion for Reconsideration or other post-decision relief shall be filed within 10 days of the date on the written Notice of the order or decision, which shall be mailed by the clerk or register on the date of the Notice. The Motion shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present; but the motion shall not exceed 10 pages. A hearing on the motion shall not be permitted except by order of the court.

(i) No Answer or Objection to a Motion for Reconsideration or other post-decision relief shall be required unless ordered by the court.

(ii) If a Motion for Reconsideration or other post-decision relief is granted, the court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(iii) The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the court unless, upon specific written request, the court has ordered such a stay.

Source

Superior Court Rule 59-A

(f) *Motions to Recuse.* All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the court. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the court shall make a record of the request, the court's findings, and its order.

Source

Superior Court Rule 50-A

(g) *Motions for Summary Judgment.*

(i) Motions for summary judgment shall be filed, defended and disposed of in accordance with the provisions of RSA 491:8-a as amended. Such motions and responses thereto shall provide specific page, paragraph, and line references to any pleadings, exhibits, answers to interrogatories, depositions, admissions, and affidavits filed with the court in support or opposition to the Motion for Summary Judgment. Only such materials as are essential and specifically cited and referenced in the Motion for Summary Judgment, responses, and supporting memoranda shall be filed with the court. In addition, except by permission of the court received in advance, no such motion, response, or supporting memorandum of law shall exceed 20 double-spaced pages. The purpose of this rule is to avoid unnecessary and duplicative filing of materials with the court. Excerpts of documents and discovery materials shall be used whenever possible.

(ii) The non-moving party shall have 30 days to respond to a motion for summary judgment, unless another deadline is established by agreement of the parties or order of the court.

(iii) Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability, the parties must provide the court with a statement of agreed facts sufficient to explain the case to the trier of fact and place it in a proper context so that the trier of fact might more readily understand what they will be hearing in the remaining portion of the trial. Absent such an agreement on facts, the matters of liability and damages cannot be severed.

Source

(i) Superior Court Rule 58-A
(ii) RSA 491:8-a
(iii) Superior Court Rule 58-A

Comments

This is not an exclusive list of the motions that can be filed in New Hampshire courts, but instead represents a sampling of the motions most commonly filed and opposed in the course of traditional New Hampshire litigation.

RULE 13. Objections

A non-moving party may object or otherwise respond to a motion within 14 days after service and filing thereof unless (a) the party is responding to a Motion for Summary Judgment, *see* RSA 491:8-a, or (b) another deadline is established by court order.

Source

Superior Court Rule 58 (modified to conform to existing New Hampshire practice), and adding 4 days to the period for objecting.

IV. Parties and their Representatives

RULE 14. Parties

In addition to the participation of plaintiffs and defendants, a civil action may also involve third parties whenever third parties may be liable to a defendant in any pending action for all or part of the plaintiff's claim against said defendant or if said defendant may have a claim against third parties, depending upon the determination of an issue or issues in said pending action.

Source

Superior Court Rule 27

RULE 15. Intervention

Any person shown to be interested may become a party to any civil action upon filing and service of a pleading briefly setting forth his relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him to appear therein. If a party, so notified, neglects to file an Appearance on or before the date established by the court, that party shall be defaulted. No such default shall be set aside, except by agreement or by order of the court upon such terms as justice may require.

Source

Superior Court Rule 139

RULE 16. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all if:

(1) The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

(2) There are questions of law or fact common to the class which predominate over any questions affecting only individual members;

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

(4) The representative parties will fairly and adequately protect the interests of the class;

(5) A class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

(6) The attorney or non-attorney representative for the representative parties will adequately represent the interests of the class.

(b) *Order Allowing Class Action.* As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this section may be conditional and may be altered or amended before the decision on the merits on the court's own motion or on motion of the parties. The action may be maintained as a class action only if the court finds that the prerequisites under subdivision (a) of this rule have been satisfied.

(c) *Satisfaction of Jurisdictional Damages Limit.* For purposes of satisfying the jurisdictional damages limit of the court, the claims of the members of the class shall be aggregated.

(d) *Description of Class.* The order permitting a class action shall describe the class. When appropriate the court may limit the class to those members who do not request exclusion from the class within the specified time after notice.

(e) *Notice of Class Action.* Following the court's order maintaining the class action, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude that party from the class if that party so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; (C) any member who does not request exclusion may,

if that party desires, enter an Appearance through that party's counsel; and contain such other information that the court deems appropriate. Unless the court orders otherwise, the representatives of the class shall bear the expense of notification and be responsible for the giving of the notice to members of the class.

(f) *Exclusion.* Any member of the plaintiff class who files an election to be excluded in the manner and in the time specified in the notice, is excluded from and not bound by the judgment in the class action. A member of a defendant class may not elect to be excluded.

(g) *Judgment.* The judgment in an action maintained as a class action, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class.

(h) *Methods of Payment of Damages.* If the court renders judgment in favor of a plaintiff class, the court may, in its discretion, order the defendant to pay damages into the court and require each member of the class to file a claim with the court, or order payment of damages in any other manner it deems appropriate.

(i) *Actions Conducted Partially as Class Actions.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class. The provisions of this subdivision shall then be construed and applied accordingly.

(j) *Orders in Conduct of Class Actions.* In the conduct of class actions the court may make and alter appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class, or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, or to appear and present claims or defenses, or otherwise to come into the action; or

(3) Dealing with similar procedural matters.

(k) *Dismissal, Discontinuance or Settlement.* A class action shall not be dismissed, discontinued or settled without the approval of the court. Notice of the proposed dismissal, discontinuance or settlement shall be given to all members of the class in such manner as the court directs.

Source

Superior Court Rule 27-A

RULE 17. Appearance and Withdrawal

(a) An Appearance in an action shall be made by filing an Appearance containing the name, street address and telephone number of the person entering the Appearance, and the complete name, street address, and telephone number of the party on whose behalf the appearance is filed. The clerk or register shall be notified of any changes of address of any of the parties. A separate Appearance is to be filed by counsel or non-attorney representative with respect to each case in which counsel or non-attorney representative appears, whether or not such cases are consolidated for trial or other purposes.

(b) The Appearance and Withdrawal of counsel or non-attorney representative shall be signed by that person. Names, street addresses and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney, non-attorney representative, or pro se party will be heard until his Appearance is so entered.

(c) *Limited Appearance of Attorneys*. To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a Limited Appearance in a non-criminal case on behalf of such unrepresented party. The Limited Appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Rule 17(a), (b) and (c) of these New Hampshire Rules of Civil Procedure shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a Limited Appearance, and who later files a pleading or motion outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing. An attorney who signs a Pleading or Motion, or any amendment thereto which is filed with the court (with the exception of a Special Appearance and motion challenging the court's jurisdiction over the defendant), will be considered to have filed a General Appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the court, the attorney could later file a Limited Appearance in the same matter.

(d) An attorney or non-attorney representative may withdraw from an action by serving a Notice of Withdrawal on the client and all other parties and by filing the notice, provided that (1) there are no motions pending before the court, (2) a Final Pretrial Conference has not been held, and (3) no trial date has been set. Unless these conditions are met, an attorney or non-attorney representative may withdraw from an action only by leave of court. Whenever an attorney or non-attorney representative withdraws from an action, and no other Appearance is entered, the court shall notify the party by mail of such withdrawal, and unless the party appears *pro se* or by another attorney or non-attorney representative on or before a date fixed by the court, the action will be terminated either by a dismissal or default as appropriate.

(e) Other than limited representation by attorneys as allowed by Rule 14(d) and Professional Conduct Rule 1.2(f), no attorney or non-attorney representative shall be permitted to withdraw his/her Appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the court for good cause shown, and on such terms as the court may order. Any motion to withdraw filed by counsel or non-attorney representative shall set forth the reason therefore but shall be effective only upon approval by the court. A factor which may be considered by the court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

(f) *Automatic Termination of Limited Representation*. Any Limited Representation Appearance filed by an attorney, as authorized under Professional Conduct Rules 1.2(f) and 14(d), shall automatically terminate upon completion of the agreed representation, without the necessity of leave of court, provided that the attorney shall provide the court a "withdrawal of limited appearance" from giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a Limited Appearance who seeks to withdraw prior to the completion of the limited representation stated in the Limited Appearance, however, must comply with Rule 17(d).

(g) *Pleading prepared for Unrepresented Party*. When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a Limited Appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement ***"This pleading was prepared with the assistance of a New Hampshire attorney."*** The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited

representation attorney shall be deemed to have made those same certifications as set forth in Rule 18(a) despite the fact the pleading need not be signed by the attorney.

Source

(a) Superior Court Rule 2-A and 14 (modified)
(b) Superior Court Rule 15
(c) Superior Court Rule 14(d)
(d) Superior Court Rules 15 and 20 (modified)
(e) Superior Court Rule 15(d)
(f) Superior Court Rule 15(e)
(g) Superior Court Rule 15(f)

RULE 18. Counsel

(a) The signature of an attorney, non-attorney representative, or pro se party to a pleading constitutes a certification that the individual has read the pleading; that to the best of that individual's knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay.

(b) If a pleading is not signed, or is signed with an intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

(c) When either party shall change attorneys or non-attorney representatives during the pendency of the action, the name of the new attorney or non-attorney representative shall be entered on the docket.

(d) No attorney or non-attorney representative will be permitted to take part in a jury trial after s/he has testified for his/her client therein unless his acting as an advocate would be permitted by Rule 3.7 of the Rules of Professional Conduct.

(e) No attorney may be surety or guarantor of any bond or undertaking in any proceeding.

Source

(a) Superior Court Rule 15
(b) Superior Court Rule 15
(c) Superior Court Rule 20
(d) Superior Court Rule 17
(e) Superior Court Rule 22

RULE 19. Out of State Counsel (Admission *Pro Hac Vice*)

(a) An attorney who is not a member of the Bar of this State, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State is associated with him or her and present at the trial or hearing.

(b) An attorney who is not a member of the Bar of this State seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last 5 years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last 5 years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac*

vice in this State within the preceding 2 years; the date of each application; and the outcome of the application.

(8) In addition, unless this requirement is waived by the court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(c) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(1) may be detrimental to the prompt, fair and efficient administration of justice;

(2) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

(d) An attorney so permitted to practice shall at all times be associated with a member of the New Hampshire bar upon whom all process, notices and other papers may be served; who shall sign all papers filed with the court; and whose attendance shall be required at all proceedings, unless excused by the court.

(e) The court may at any time for good cause revoke such permission.

Source

Superior Court Rule 19 (modified)

RULE 20. Non-attorney representatives

(a) No person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the court:

(1) a power of attorney signed by the party for whom s/he seeks to appear, witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action;

(2) an affidavit under oath in which said person discloses (i) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (ii) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (iii) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court; and

(3) a prior written approval of the court. Requests for such written approval shall be made to the court in writing *with a* power of attorney designating such person as the attorney-in-fact in the action. The *request and* power of attorney shall be *signed by the party and* witnessed and acknowledged before a justice of the peace or notary public.

(b) Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(c) A party who appears *pro se* shall so state in the Notice of Appearance, and all pleadings and motions. The words *"pro se"* shall follow the party's signature on all papers subsequently filed in that action.

Source

(a) Superior Court Rule 14 (modified)
(b) Superior Court Rule 14
(c) New

Comment

These rules should be interpreted to be consistent with RSA 311, Attorneys and Counselors.

V. Discovery

RULE 21. General Provisions

(A) *Discovery Methods*. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and physical or mental examinations.

(B) *Scope of Discovery*. Unless otherwise limited by order of the court in accordance with these rules, parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(C) *Medical Examination*. In actions to recover damages for personal injuries, the defendant shall have the right to a medical examination of the plaintiff.

(D) *Privilege Log*. When a party withholds materials or information otherwise discoverable under this rule by claiming that the same is privileged, the party shall promptly and expressly notify the opposing party of the privilege claim and, without revealing the contents or substance of the materials or information at issue, shall describe its general character with sufficient specificity as to enable other parties to assess the applicability of the privilege claim. Failure to comply with this requirement shall be deemed a waiver of any and all privileges.

(E) *Discovery Abuse; Sanction.*

(1) The court may impose appropriate sanctions against a party or counsel for engaging in discovery abuse. Upon a finding that discovery abuse has occurred, the could should normally impose sanctions unless the offending party or counsel can demonstrate substantial justification for the conduct at issue or other circumstances that would make the imposition of sanctions unfair. Discovery abuse includes, but is not limited to, the following:

(a) employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or undue burden or expense;

(b) employing discovery methods otherwise available which result in legal expense disproportionate to the matters at issue;

(c) making, without substantial good faith justification, an unmeritorious objection to discovery;

(d) responding to discovery in a manner which the responding party knew or should have known was misleading or evasive;

(e) producing documents or other materials in a disorganized manner or in a manner other than the form in which they are regularly kept;

(f) failing to confer with an opposing party or attorney in a good faith effort to resolve informally a dispute concerning discovery;

(2) The sanctions which may be imposed for discovery abuse include, but are not limited to, the following:

(a) a monetary sanction in an amount equal to the unnecessary expenses incurred, including reasonable attorney's fees, as the result of the abusive conduct;

(b) an issue sanction that orders that designated facts be taken as established by the party who has been adversely affected by the abuse;

(c) an evidence sanction that prohibits the offending party from introducing certain matters into evidence;

(d) a terminating sanction that strikes all or parts of the claims or defenses, enters full or partial judgment in favor of ordered discovery has been provided.

(F) *Trial Preparation.*

(1) A party may obtain discovery of documents, electronically stored information and tangible things otherwise discoverable and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, non-attorney representative, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(2) A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement

concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(G) *Sequence and Timing of Discovery***.** Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(H) *Supplementation of Responses***.** A party, who has responded to a request for discovery with a response that was complete when made, is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (a) he knows that the response was incorrect when made, or (b) he knows that the response, though correct when made, is no longer true.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Source

(A) Superior Court Rule 35(a)
(B) Superior Court Rule 35(b)(1)
(C) Superior Court Rule 63(D)
(D) Superior Court Rule 35(b)(2)
(E) Superior Court Rule 35(d)
(F) Superior Court Rule 35(e)

RULE 22. Written Interrogatories

(a) Any party may serve, by mail or delivery by hand, upon any other party written interrogatories relating to any matters which may be inquired into under Rule 21.

(b) Any party propounding interrogatories shall provide the opponent with notice, substantially as set forth in the following form, of the obligation to answer said interrogatories within thirty days. The notice shall be at the top of the first page and printed in capital, typewritten letters or in ten-point, bold-face print. The form of the notice in substance shall be as follows:

These interrogatories are propounded in accordance with Rule 22 of the New Hampshire Rules of Civil Procedure. You must answer each question separately and fully in writing and under oath. You must return the original and one copy of your answers within thirty (30) days of the date you received them to the party or counsel who served them upon you. If you object to any question, you must note your objection and state the reason therefore. If you fail to return your answers within thirty (30) days, the party who served them upon you may inform the court, and the court shall make such orders as justice requires, including the entry of a conditional default against you.

(c) Interrogatories may be served at any time after service of the action.

(d) The party serving the interrogatories shall furnish the answering party with an original and two copies of the interrogatories. The interrogatories shall be so arranged that after each separate question shall appear a blank space reasonably calculated to enable the answering party to have his answer typed in. The parties may agree to transmit interrogatories electronically or by computer disk, enabling the answering party to provide answers directly after each separate question using the party's available word processing technology. In the event of such an agreement, the requirement of providing space between each question sufficient to manually insert answers is obviated.

(e) Interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, by an officer or agent who shall furnish all information available to the party.

(f) Each question shall be answered separately, fully and responsively in such manner that the final document shall have each interrogatory immediately succeeded by the separate answer.

(g) If, in any interrogatory, copies of papers, documents or electronically stored information are requested, such interrogatory shall be deemed to be a request for

production pursuant to subdivision (h) of this rule. If any copy provided in response to such an interrogatory is a report of an expert witness or a treating physician, it shall be the exact copy of the entire report or reports rendered by him, and the answering party shall, unless otherwise stated, be deemed to have certified that the existence of other reports of that expert, either written or oral, are unknown to him and, if such become later known or available, he shall serve them promptly on the propounding party but in any case not later than ten days prior to the final trial management conference.

(h) The party, who is served with interrogatories, shall serve his answers thereto, by mail or delivery in hand, upon the party propounding them within thirty days after service of such interrogatories, or within thirty days after the Return Day, whichever date is later. The parties may extend such time by written agreement.

(i) The answers shall be served, together with the original and one copy of the interrogatories upon the propounding party. If copies of papers are annexed to answers, they need be annexed to only one set.

(j) If a party, upon whom interrogatories are served, objects to any questions propounded therein, he may answer the question by objecting and stating the grounds. He shall make timely answer, however, to all questions to which he does not object. The propounder of a question to which another party objects may move to compel an answer to the question, and, if the motion is granted, the question shall be answered within such time as the court directs.

(k) A party may file more than one set of interrogatories to an adverse party, but the total number of interrogatories shall not exceed fifty, unless a different number is established by structuring order issued pursuant to Rule 5 of these rules, or the court otherwise orders for good cause shown after the proposed additional interrogatories have been filed. In determining what constitutes an interrogatory for the purpose of applying this limitation in number, it is intended that each question be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined or arranged.

(l) The adverse party shall have the same privileges in answering written interrogatories as the deponent in the taking of a deposition.

(m) Interrogatories and answers may be used at the trial to the same extent as depositions. If less than all of the interrogatories and answers thereto are introduced or read into evidence by a party, an adverse party may introduce or read into evidence any other of the interrogatories and answers or parts thereof necessary for a fair understanding of the parts read or otherwise introduced into evidence.

(n) Neither the interrogatories nor the answers need be filed with the court unless the court otherwise directs.

Source

Superior Court Rule 36 (modified to allow a party upon whom interrogatories are served thirty days to object to any question propounded therein). Rule 22(j), N.H.R.Civ.P. is the language from a section of current Superior Court Rule 36, modified to be consistent with existing practice.

Comments

The conditional default rule has been moved to the end of this section of the rules, and it applies to both interrogatories and requests for production of documents

RULE 23. Production of Documents

(a) *Scope*. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form, or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 21(B) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 21(B).

(b) *Procedure***.**

(1) The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.

(3) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

Source and Comment

The language contained in this rule is derived from Rule 34(a), Fed.R.Civ.P. It is consistent with New Hampshire practice. *See* Superior Court Rule 35(a).

RULE 24. Depositions

(a) No notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least 3 days, exclusive of the day of service and the day of caption, before the day on which they are to be taken. Provided, however, that twenty days' notice shall be deemed reasonable in all cases, unless otherwise ordered by the Court. No deposition shall be taken within 20 days after service of the Complaint, except by agreement or by leave of court for good cause shown.

(b) Every notice of a deposition to be taken within the State shall contain the name of the stenographer proposed to record the testimony.

(c) When a statute requires notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's representative of record. In cases where the action is in the name of a nominal party and the Complaint or docket discloses the real party in interest, notice shall be given either to the party in interest or that party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand.

(d) The interrogatories shall be put by the attorneys or non-attorney representatives and the interrogatories and answers shall be taken in shorthand or other form of verbatim reporting approved by the court and transcribed by a competent stenographer agreed upon by the parties or their attorneys present at the deposition. In the absence of such agreements, the stenographer shall be designated by the Court. Failure to object in writing to a stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer recording the testimony.

(e) No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

(f) The stenographer shall cause to be noted any objection to any interrogatory or answer without deciding its competency. If complaint is made of interference with any witness, the magistrate shall cause such complaint to be noted and shall certify the correctness or incorrectness thereof in the caption.

(g) Upon motion, the court may order the filing of depositions, and, upon failure to comply with such order, the court may take such action as justice may require.

(h) The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with his seal affixed, where one is required, to the certificate of an oath administered by him in the taking of affidavits or depositions, will be prima facie evidence of his authority so to act.

(i) The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

(j) If any deponent refuses to answer any question propounded on deposition, or any party fails or refuses to answer any written interrogatory authorized by these rules, or fails to comply within 30 days after written request to, the party propounding the question may, upon notice to all persons affected thereby, apply by motion to the court for an order compelling an answer. If the motion is granted, and if the court finds that the refusal was without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the deponent and the party, attorney, or non-attorney representative advising the refusal, or either of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable counsel fees.

(k) If the motion is denied and if the court finds that the motion was made without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the examining party or the attorney or non-attorney representative advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable counsel fees.

(l) *Videotape Depositions*.

(1) The court, within its discretion, may allow the use of videotape depositions that have been taken by agreement; and provided further that, if the parties cannot reach such an agreement, the court may, in its discretion, order the taking and/or use of such depositions. At the commencement of the videotape deposition, counsel representing the deponent should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference without undue delay and unnecessary noise. Counsel and witnesses shall comport themselves at all times as if they were actually in the courtroom.

(2) If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written depositions.

(3) A party objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape shall provide the court at the pretrial settlement conference with a transcript of the videotape proceedings that is sufficient to enable the court to act upon the objection before the trial of the case, or the objection shall be deemed waived.

Source

(a) Superior Court Rule 38 (modified for use with complaint rather than writ)
(b) Superior Court Rule 39
(c) Superior Court Rule 40 (modified for use with complaint rather than writ)
(d) Superior Court Rule 41
(e) Superior Court Rule 39
(f) Superior Court Rule 41
(g) Superior Court Rule 41
(h) Superior Court Rule 42. See RSA 517:5 (Appointment of Special Commissioner)
(i) Superior Court Rule 44
(j) Superior Court Rule 44 (modified to be consistent with Rule 22)
(k) Superior Court Rule 44
(l) Superior Court Rule 45
(l)(1) Superior Court Rule 45
(l)(2) Superior Court Rule 45
(l)(3) Superior Court Rule 45-A

RULE 25. Expert Witnesses

(a) Within 30 days of a request by the opposing party, or in accordance with any order of the court following a Structuring Conference held pursuant to Rule 5, a party shall make a disclosure of expert witnesses (as defined in Rule 702 of the Rules of Evidence), whom he expects to testify at trial.

(b) Said disclosure shall:

(1) identify each person, including any party, whom the party expects to call as an expert witness at trial;

(2) provide a brief summary of the expert's education and experience relevant to his area of expertise;

(3) state the subject matter on which the expert is expected to testify; and

(4) state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party shall attach to the disclosure a copy of any expert report relating to such expert.

Source

(a) Superior Court Rule 35(f)
(b) Superior Court Rule 35(f)

RULE 26. Requests for Admissions

(a) Any party, desiring to obtain admission of the signature on or the genuineness of any relevant document or of any relevant facts which he believes not to be in dispute, may, after the Return Day of the action without leave of court, file an original request therefor with the court, accompanied by any original documents involved, and deliver a copy of such request and documents by mail or in hand to the adverse party or his representative. Each of the matters, of which an admission is requested, shall be deemed admitted unless within thirty days after such delivery the party requested files with the Court and delivers a copy thereof by mail or in hand to the party requesting such admission, or his attorney or non-attorney representative, either a sworn denial thereof or a written objection on the ground of privilege or that it is otherwise improper.

(b) If objection is made to part of a request, the remainder shall be answered within the time limit, and when good faith requires that a party qualify his answer or deny only part of a matter, he shall specify so much of it as is true and qualify or deny the remainder.

(c) Any party, who without good reason or in bad faith, denies under this rule any signature or fact which has been requested and which is thereafter proved, or who without good reason or in bad faith requests such admission under this rule and thereafter fails to prove it, may, on motion of the other party, be ordered to pay the reasonable expense, including counsel fees, incurred by such other party in proving the signature or fact or in denying the request, as the case may be.

Source

Superior Court Rule 54

RULE 27. Discovery Motions

(a) *Protective Orders*. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the discovery not be had; (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (e) that discovery be conducted with no one present except persons designated by the court; (f) that a deposition after being sealed be opened only by order of the Court; (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

(b) If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(c) *Conditional Default*. If the party upon whom interrogatories have been served, shall fail to answer said interrogatories within 30 days, or any enlarged period, unless written objection to the answering of said interrogatories is filed within that period, said failure will result in a conditional default being entered by the Court upon motion being filed indicating such failure to answer. The party failing to answer shall receive notice of the conditional default. The conditional default shall be vacated if the defaulted party answers the interrogatories within 10 days of receiving notice thereof and moves to strike the conditional default. If the defaulted party fails to move to strike the conditional default within 10 days of receiving notice thereof, the adverse party may move to have a default judgment entered and damages assessed in connection therewith. If, upon review of an affidavit of damages, the court determines that it does not provide a sufficient basis for determining damages, the court may, in its discretion, order a hearing thereon.

(d) *Motion to Compel*. Before any Motion to Compel discovery may be filed, counsel for the parties shall attempt in good faith to settle the dispute by agreement. If a Motion to Compel regarding requested discovery is filed, the moving party shall be deemed to have certified to the court that he has made a good faith effort to obtain concurrence in the relief sought.

(e) Where a discovery dispute has been resolved in favor of the party requesting discovery by court order, the requested discovery shall be provided within 10 days thereafter or within such time as the court may direct.

(f) Motions for protective order or to compel responses to discovery requests shall include a statement summarizing the nature of the action and shall have annexed thereto the text of the requests and responses, if any objected to.

(g) If the court finds that a motion, which is made pursuant to this rule, was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the purpose of delay, the court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

Source

(a) Superior Court Rule 35(c)
(b) Superior Court Rule 35(c)
(c) Superior Court Rule 36
(d) Superior Court Rule 57-A
(e) New. Consistent with existing New Hampshire practice.
(f) New. Consistent with existing New Hampshire practice.
(g) Superior Court Rule 35(c)

VI. Alternatives to Trial

RULE 28. Mediation

(a) The Court may order the parties in any civil action to participate in mediation.

(b) If the parties agree, they may elect a form of alternative dispute resolution other than mediation (e.g. neutral evaluation, non-binding arbitration or binding arbitration).

(c) The parties may agree to engage in private mediation instead of or in addition to the court-ordered mediation.

(d) The parties may also request that the presiding judge assign a complex case for intensive mediation to be conducted by another judge.

(e) Unless the parties agree otherwise, proceedings under this rule are nonbinding and shall not impair the litigants' trial rights.

Source

New (derived from Superior Court Rule 170)

Comment

The courts are currently involved in an effort to create a complete set of rules addressing the various forms of alternative dispute resolution (ADR). The umbrella rule set forth here is designed to identify the general parameters of the ADR process, which will likely be subject to the more detailed procedures identified in the separate set of ADR rules.

RULE 29. Summary Jury Trial

(a) *Cases for Summary Jury Trial Proceedings.* The parties may request, and the court may order that a summary jury trial be held in any case, provided the following conditions are satisfied:

(1) The case is not one in which the credibility of a witness is likely to be determinative of the outcome of the case.

(2) The decision in the case will not set a precedent but simply requires the application of existing law.

(3) The case shall be in trial readiness when called for summary jury trial and all discovery shall have been completed.

(b) *Objections To Order for Summary Jury Trial.* Specific objections to an order placing a case on the summary jury trial list shall be raised by motion filed within 10 days of the mailing of notice of such order and shall be heard by the presiding judge.

(c) *Summary Jury Trial; When and Where Held; Notice.*

(1) Summary jury trials shall be held at the time and place designated by the presiding judge. The Court shall notify counsel in writing, at least fifteen (15) days before the trial, of the time and place of trial.

(2) Unless excused by order of court, clients or client representatives shall be in attendance at the summary jury trial.

(d) *Jury Panel.* The case shall be heard before a jury of six members or such lesser number as the parties may stipulate, drawn in accordance with usual procedures. Once a juror has served on a summary jury, he or she shall not serve on any regular jury during the same term.

(e) *Jury Instructions.* Unless excused by order of court, counsel shall submit proposed jury instructions to the court and opposing counsel no later than 5 days before the date set for hearing.

(f) *Presentation of Evidence.* All evidence shall be presented through the attorneys, non-attorney representatives or parties (if *pro se*), who may incorporate arguments on such evidence in their presentations. Each representative shall be given one hour to describe to the jury that party's view of the circumstances of the case. Counsel may reserve a portion of the hour for a statement in rebuttal. Only evidence that would be admissible at trial upon the merits may be presented. Counsel may only present factual representations supportable by reference to

discovery materials, to a signed statement of a witness, to a stipulation, or to a document or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during a presentation and submitted for the jury's consideration.

(g) *Exhibits.* Prior to the summary jury trial, counsel shall mark and exchange copies of all proposed exhibits they plan to offer at said trial and inform the court whether they object to any proposed exhibit, setting forth reasons in support thereof. Failure to exchange a proposed exhibit shall constitute valid grounds for objection to admission. Failure to file an objection to any exchanged proposed exhibit shall constitute a waiver of any objection thereto.

(h) *Objections.* Objections will be received if in the course of a presentation counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon.

(i) *The court's charge.* After presentations, the jury will be given an abbreviated charge by the presiding judge on the applicable law.

(j) *Verdict.* The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on liability and/or damages (each known as the jury's advisory opinion). The jury will be encouraged to return a consensus verdict.

(k) *Transcript.* No record of the proceedings shall be permitted except in extraordinary circumstances, as determined by the court.

(l) *Effect of Verdict.* Counsel may stipulate that a consensus verdict by the jury will be deemed a final determination on the merits and that judgment be entered thereon by the court, or may stipulate to any other use of the verdict that will aid in the resolution of the case.

(m) *Restoration to Active List; Inadmissibility of Summary Jury Trial Proceedings.* The parties shall notify the court within fifteen (15) days after entry of the summary jury trial verdict whether settlement in the case has been reached. If a settlement agreement or stipulations for docket markings are not filed, the case shall be forth-with restored to the trial docket. In the event that no settlement is reached following the summary jury trial, and the case is restored to the trial docket, no person shall be called as a witness to testify what took place in the summary jury proceeding. In such event, the documents relating to that proceeding and the evidence presented therein shall be sealed and shall not be admissible, except for such evidence as is otherwise admissible at trial under the rules of evidence. The judge who presided at the summary jury proceeding shall not be the trial the court.

Source

Superior Court Rule 171

VII. Trials

RULE 30. Trial Management Conference

Jury Trials

(a) In every case scheduled for jury trial, the court shall schedule a Trial Management Conference which shall take place within 14 days before trial is to begin. At the Conference, parties will be present or available by telephone, prepared to discuss conduct of the trial and settlement.

(b) 14 days prior to the Trial Management Conference, all parties shall file with the court and serve on the other parties Pretrial Statements, which shall include, by numbered paragraphs, a detailed, comprehensive, and good faith statement, setting forth the following:

1. A summary of the case that can be read by the court to the jury at the beginning of trial;

2. Disputed issues of fact;

3. Applicable law;

4. Disputed issues of law;

5. Specific claims of liability by the party making the claim;

6. Defendant's specific defenses;

7. Itemized special damages;

8. Specification of injuries with a statement as to which, if any, are claimed to be permanent;

9. The status of settlement negotiations;

10. A list of all exhibits to be offered in the direct case of each party. The parties, or their counsel, shall bring exhibits, or exact copies of them, to court on the day of the Trial Management Conference for examination by opposing parties or their representatives;

11. A list of all depositions to be read into evidence;

12. A waiver of claims or defenses, if any;

13. A list of the names and addresses of all witnesses who may be called;

14. Whether there will be a request for a view and, if so, who shall pay the cost in the first instance;

15. The names and addresses of the trial attorneys or non-attorney representatives.

(c) Except for good cause shown, only witnesses listed in the Pre-trial Statement will be allowed to testify and only exhibits, so listed, will be received in evidence.

(d) Preliminary requests for instructions about unusual or complex questions of law shall be submitted in writing at the Trial Management Conference. Supplementary requests may be proposed at any time prior to the time the court completes its instructions to the jury.

Bench Trials

(e) The court may direct the parties to attend a Trial Management Conference in non-jury cases. Written pretrial statements are not required in non-jury cases unless ordered by the court. Requests for findings of fact and rulings of law shall be submitted in writing in accordance with a schedule to be determined by the court.

Source

Superior Court Rule 62 (modified from the June 2006 proposal presented to the Advisory Committee on Rules)

RULE 31. Standing Trial Orders - Procedures

(a) *Addressing the court.* Anyone addressing the court or examining a witness shall stand. No-one should approach the bench to address the court except by leave of the court.

(b) *Opening statements.* Opening statements shall not be argumentative and shall not be longer than 30 minutes unless the Court otherwise directs. Closing arguments shall be limited to 1 hour each, unless otherwise ordered by the court in advance. Before any attorneys, non-attorney representatives or *pro se* party shall read to the jury any excerpt of testimony prepared by the court, the opposing party shall be furnished with a copy thereof prepared by said stenographer.

(c) *Copies of documents for court*. Counsel shall seasonably furnish for the convenience of the court, as s/he may require, copies of the specifications, contracts, letters or other papers offered in evidence.

(d) *Examination of witnesses.*

(1) Only 1 counsel on each side will be permitted to examine a witness.

(2) A witness cannot be re-examined by the party calling him, after his cross-examination, unless by leave of court, except so far as may be necessary to explain his answers on his cross-examination, and except as to new matter elicited by cross-examination, regarding which he has not been examined in chief.

(3) After a witness has been dismissed from the stand, he cannot be recalled without permission of the court.

(4) No person, who has assisted in the preparation of a case, shall act as an interpreter at the trial thereof, if objection is made.

(5) *Attorney as Witness*.

(i) *Compelling Testimony*. Except with leave of court for good cause shown, no attorney shall be compelled to testify at trial or hearing in any action in which the attorney is counsel, unless notified in writing at least 30 days before the trial or hearing. The notice shall contain a brief statement explaining why testimony of the attorney may be necessary.

(ii) *Participation as Advocate.* An attorney who gives testimony at trial or hearing shall not act as advocate at such trial or hearing unless the attorney's testimony relates to an uncontested issue, or relates to the nature and value of legal

services rendered in the case, or unless the court determines that disqualification of the attorney would work unreasonable hardship on the attorney's client.

(e) *Exceptions Unnecessary*. Formal exceptions to non-evidentiary rulings or orders of the court are unnecessary, and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at or before the time the ruling or order of the court is made or sought, makes known to the court by pleading or orally on the record the action which he desires the court to take or his objection to the action requested by a party opponent, provided that in each instance the party has informed the court of the specific factual or legal basis for his position. Objections to evidentiary rulings are governed by N.H. R. Ev. 103.

(f) *Objections*. When stating an objection, counsel will state only the basis of the objection (e.g., "leading," "non-responsive," or hearsay"), provided, however, that upon counsel's request, counsel shall be permitted a reasonable opportunity to approach the bench to elaborate and present additional argument or grounds for the objection.

(g) *Plaintiff rests.* In all trials, the plaintiff shall put in his whole case before resting and shall not thereafter, except by permission of the court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his/her whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

(h) *Bench motions.* Motions for dismissal or mistrial as well as offers of proof should be made at the bench and out of the hearing of the jury.

(i) *Protection of children in sex-related cases*. In any delinquency proceeding under RSA chapter 169-B alleging a sex-related offense in which a minor child was a victim, the court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying, unless otherwise ordered by the court for good cause shown. In the event that the alleged victim or minor witness is nervous, afraid, timid, or otherwise reluctant to testify, the court may allow the use of leading questions during the initial discovery.

Source

(a) Superior Court Rule 16
(b) Superior Court Rule 71
(c) Superior Court Rule 64
(d)(1) Superior Court Rule 65
(d)(2) Superior Court Rule 67
(d)(3) Superior Court Rule 69
(d)(4) Superior Court Rule 109
(d)(5)(i) Superior Court Rule 18 (modified)
(d)(5)(ii) Superior Court Rule 17 and Rule 3.7 of the Rules of Professional Conduct
(e) Superior Court Rule 77-A

(f) Superior Court Rule 66(a)
(g) Superior Court Rule 70
(h) Superior Court Rule 66(b)
(i) District Court Rule 1.24

RULE 32. Standing Trial Orders – Proof

(a) *Bills*. If, after an action has been entered for 3 months, a party submits copies of bills incurred to opposing counsel, and no objection has been made within 30 days, the bills may be introduced without formal proof.

(b) *Criminal record.* If a party plans to use or refer to any prior criminal record, for the purpose of attacking or affecting the credibility of a party or witness, s/he shall first furnish a copy of same to the opposing party, and then obtain a ruling from the court as to whether the opposing party or a witness may be questioned with regard to any conviction for credibility purposes.

(i) Evidence of a conviction under this rule will not be admissible unless there is introduced a certified record of the judgment of conviction indicating that the party or witness was represented by counsel at the time of the conviction unless counsel was waived.

(c) *Documents*. The signatures and endorsements of all written instruments declared on will be considered as admitted unless the defendant shall file a notice within 30 days after the Return Day at which the writ is entered that they are disputed.

(d) *Expert files.* All experts, including doctors and law enforcement personnel, who are to testify at a trial, will be advised by counsel to bring their original records and notes to court with them.

(e) *Life expectancy*. The life expectancy tables in textbooks such as C.J.S. and Am. Jur. (2d) are admissible as evidence to prove life expectancy.

(f) *Medical reports.* Copies of all medical reports relating to the litigation, in the possession of the parties, will be furnished opposing counsel on receipt of the same.

(i) *Medical records.* X-rays and hospital records (which are certified as being complete records) if otherwise admissible and competent may be introduced without calling the custodian or technician. Any party shall have the right to procure from opposing counsel an authorization to examine and obtain copies of hospital records and X-rays involved in the litigation.

(g) *Motor vehicles.*

(i) *Speed.* The issue of speed of a motor vehicle on a public highway, if material, will be submitted on the grounds of reasonableness without regard to statutory provisions relative to rates of speed that are *prima facie* reasonable, unless a party objects thereto at the Trial Management Conference, or files written objection thereto at least seven days before the trial.

(ii) *Licensing.* No claim is to be made at any trial that the operator of a motor vehicle, involved in the case, was not properly licensed, unless the claim has been made at the pretrial settlement conference, or unless the claim was filed in writing at least 7 days before the trial.

(h) *Proof of Highway Waived unless Demanded.* In any case in which a road or way is alleged to be a "way" as defined in RSA 259:125 or a public highway, a party shall notify the opposing party at least 10 days prior to trial if said "way" or public highway must be formally proved; otherwise, the need to formally prove said "way" or public highway will be deemed to be waived.

(i) *Special Damages.* Any party claiming damages shall furnish to opposing counsel, within 6 months after entry of the action, a list specifying in detail all special damages claimed; copies of bills incurred thereafter shall be furnished on receipt. Any party claiming loss of income shall furnish opposing counsel, within six months after the entry of the action, as soon as each is available, copies of the party's Federal Income Tax Returns for the year of the incident giving rise to the loss of income, and for two years before, and one year after, that year, or, in the alternative, written authorization to procure such copies from the Internal Revenue Service.

(j) *Stipulations.* Unless otherwise expressly provided by these rules, all stipulations affecting a civil action, except stipulations which are made in the presence of the court and entered on the record, or embodied in an order of the court, shall be in writing and shall be signed by attorneys of record, non-attorney representatives of record, or by parties if *pro se.* The court may require handwritten stipulations to be replaced by fully executed, typewritten stipulations within 10 days. Except to prevent injustice, no stipulation which does not satisfy these requirements shall be given effect.

Source

(a) Superior Court Rule 63C
(b) Superior Court rule 68
(c) Superior Court Rule 3 (modified for use of complaint rather than writ)
(d) Superior Court Rule 63G
(e) Superior Court Rule 63A
(f) Superior Court Rule 63E
(f)(i) Superior Court Rule 63F
(g)(i) Superior Court Rule 63H
(g)(ii) Superior Court Rule 63I
(h) Superior Court Rule 89
(i) Superior Court Rule 63B
(j) Probate Court Rule 150 (modified)

RULE 33. Jurors

(a) *Juror Questionnaires*. The clerk of the superior court for each county shall maintain a list of jurors presently serving, together with copies of their completed Questionnaire forms, which shall be available for inspection by attorneys, non-attorney representatives and *pro se* parties.

(i) The clerk's office shall permit attorneys, non-attorney representatives and *pro se* parties who have jury cases scheduled for trial during the term to have a photocopy of the questionnaires which have been completed by the jurors presently serving. Such questionnaires shall not be exhibited to anyone other than the parties and their representatives.

(ii) Violation of this rule may be treated as contempt of Court.

(b) *Voir Dire.* Voir dire of the jury at the start of trial is governed by RSA 512-A:12-a.

(c) *Juror Notetaking.* It is within the court's discretion to permit jurors to take notes on evidence. If notetaking is allowed, after the opening statements the court will supply each juror with a pen and notebook to be kept in the juror's possession in the court and jury rooms, and to be collected and held by the bailiff during any recess in which the jurors may leave the courthouse and during arguments and charge. After verdict, the court will immediately destroy or order the destruction of all notes.

(d) *Juror Questioning of Witnesses at Trial*. In any civil case, it is within the discretion of the trial the court to permit jurors to ask written questions. If a trial the court decides to permit jurors to ask written questions at trial, the following procedure shall be utilized:

1. At the start of the trial, the judge will announce to the jury and counsel the decision to allow jurors to ask written questions of witnesses. At this time the judge will instruct the jurors on taking notes and, as to the scope of questioning, the procedure to be followed.

2. Trial will proceed in the normal fashion until questioning of the first witness has been completed by both counsel.

3. When questioning of the first witness is completed, the court will allow jurors to formulate any questions they may have, in writing. Jurors will be asked to put their seat number on the back of the question. The judge is the only person who will see the number.

4. The bailiff will collect the anonymous questions and deliver them to the judge.

5. At the bench, the judge and counsel will read the proposed questions. Counsel will be given the opportunity to make objections on the record to any proposed question after which the judge will decide if they are appropriate, based on the rules of evidence, and whether, under the circumstances of the case, the judge will exercise discretion to permit the questions.

6. Questions may be rephrased by the judge, or the judge may ask the question in a way mutually agreeable to the parties. The question should, however, attempt to obtain the information sought by the juror's original question.

7. After all the chosen questions are answered, each counsel will have an opportunity to re-examine the witness. The party who called the witness will proceed first. The judge should allow only questions which directly pertain to questions posed by the jurors. The judge may also impose a time limit. If the judge does plan to impose a time limit, counsel should be notified and given an opportunity to object to the length outside the hearing of the jury.

8. The judge shall instruct the jury substantially as follows at the beginning of trial:

Ladies and gentlemen of the jury, I have decided to allow you to take a more active role in your mission as finders of fact. I will permit you to submit written questions to witnesses under the following arrangements.

After each witness has been examined by counsel, you will be allowed to formulate any questions you may have of the witness. Please remember that you are under no obligation to ask questions, and questions are to be directed only to the witness. The purpose of these questions is to clarify the evidence, not to explore your own legal theories or curiosities.

If you do have any questions, please write them down on a pad of paper. Do not put your name on the question, and do not discuss your questions with fellow jurors. The bailiff will collect the questions, and I will then consider whether they are permitted under our rules of evidence and are relevant to the subject matter of the witness' testimony. If I determine that the question or questions may be properly asked of the witness pursuant to the law, I will ask the question of the witness myself.

It is extremely important that you understand that the rejection of a question because it is not within the rules of evidence, or because it is not relevant to the witness' testimony, is no reflection upon you. Also, if a particular question cannot be asked, you must not speculate about what the answer might have been.

9. If the court decides to ask questions during trial, the following instruction will be given before the jury retires to deliberate:

Ladies and gentlemen of the jury, I remind you of my earlier remarks regarding juror questions. Some questions cannot be asked in a court of law because of certain legal principles. For this reason there is the possibility that a question you have submitted has been deemed inappropriate by me and will not be asked. I alone have made this determination, and you should not be offended, or in any way prejudiced by my determination.

(e) *Communication with Jurors.* Before and during trial no attorney, non-attorney representative, party or witness shall knowingly communicate directly or indirectly, with any member of the venire from which the jury will be selected, or with any juror.

For 30 days after discharge of the jury venire on which a juror has served, no attorney, non-attorney representative or party shall directly or indirectly interview, examine or question any juror or member of a juror's family with respect to the trial, verdict or deliberations. At no time shall an attorney, non-attorney representative or party, directly or indirectly ask questions of or make comments to a juror that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service. Upon application of any person the court may issue protective orders or impose sanctions as justice may require.

(f) *Juror Questions During Deliberations.* After a case has been submitted to a jury, and the jury has retired for deliberations, counsel shall not leave the courthouse without permission of the court. If counsel or non-attorney representatives are absent from the courthouse, with or without permission, when a jury requests additional instructions, such absence shall constitute a waiver of the right to be present during instructions given in response to the request.

(g) *Loss of a juror.* If any juror or jurors become disabled, or otherwise unavailable, during the course of a trial, the trial will continue with the jurors who remain, unless prior to the selection of the jury, a party notifies the court that he objects to such procedure.

Source

(a) Superior Court Rule 61-A
(b) Superior Court Rule 61-A
(c) Superior Court Rule 64-A
(d) Superior Court Rule 64-B
(e) Superior Court Rule 77-B(b)
(f) Superior Court Rule 114
(g) Superior Court Rule 9

VIII. Judgment

RULE 34. Settlements

(a) Whenever an attorney, non-attorney representative or *pro se* party states orally or in writing to the court that a particular case has been settled and that agreements will be filed, the court shall forthwith notify by mail the parties of record or their representatives of such statement, and, if the agreements and/or docket markings are not filed within thirty days after the mailing of such notice, the court shall take such action as justice may require.

(b) In order that the Court may seasonably make up and complete the court's record, the parties shall seasonably file all papers and documents necessary to make up and enter the judgment and to complete the record of the case and no execution shall issue, or final order or decree be entered, until such papers are filed.

(c) No final order will be entered until the parties have submitted a final civil action disposition sheet.

Source

(a) Superior Court Rule 51
(b) Superior Court Rule 55
(c) New

RULE 35. Approval of Settlement: Minors

(a) All petitions for approval of settlement of actions on behalf of minors shall be signed by the parent, next friend or guardian of the minor.

(b) Court approval is not required for the settlement of any suit or claim brought on behalf of a minor in which the net amount is equal to or less than $10,000.00. Any settlement of such suit or claim in which the net amount exceeds $10,000.00 shall require court approval.

(c) In any suit or claim on behalf of a minor if the amount to be paid to the minor before the age of majority exceeds $10,000.00, the court shall require proof in the form of a certified statement from the Court of Probate that the guardian ad litem, parent, next friend, or other person who receives money on behalf of the minor whether through settlement, judgment, decree or other order, has been appointed guardian of the estate of such minor and is subject to the duties prescribed under RSA 463:19. In the event of a structured settlement where an amount will be paid to the minor both before and after the minor reaches the age of majority, no guardian of the estate of such minor is required if the amount to be paid to the minor before the age of majority is $10,000.00 or less. If the amount to be paid to the minor before the age of majority in such structured settlement exceeds $10,000.00, then a guardian of the estate of such minor is required. In determining whether the net amount of a settlement exceeds $10,000.00, all sums covering attorney's fees, court costs and other expenses related to the claim including medical expenses are to be excluded.

(d) The petition shall contain the following information where applicable:

1. A brief description of the accident and of all injuries sustained and the age of the minor.

2. An itemized statement of all medical expenses and special damages incurred by the minor.

3. The total amount of the settlement and whether any bills or expenses are to be paid out of the total settlement or are being paid in addition as part of the parent's claim. If the parent is being paid anything directly, the petition should contain a statement of the total amount being paid to the parent and a specification of the items covered.

4. Whether the settlement was negotiated by counsel actually representing the minor.

5. A statement from the attorney for non-attorney representative for the minor as to whether there was medical payment insurance available to the minor

and whether or not a claim has been made for said benefits or whether payment has been received.

6. A statement from the attorney for the minor as to whether any liens for medical providers have been asserted or are assertable and how the settlement would resolve those liens.

7. The net amount to be received on behalf of the minor.

8. A request that the settlement be approved.

(e) The petition must be accompanied with the following material:

1. A photocopy of the minor's birth certificate.

2. An itemized statement from counsel detailing the nature of the work performed and the time spent on the case. An attorney's fee in excess of 25% of the settlement amount will not be ordinarily allowed unless upon good cause shown. In the event that counsel seeks an attorney's fee in excess of 25%, counsel shall file a motion requesting such an approval which motion shall contain the reasons for the request. A copy of that motion shall be provided to the next friend at least 10 days prior to the hearing or conference relative to approval of the settlement.

(f) The court will not authorize the next friend to settle the action or authorize the execution of releases and will not make any order respecting indemnity agreements, and the petition should make no such request.

(g) The court, upon its own motion, may appoint a guardian ad litem to represent the interests of the minor child and/or to review the proposed settlement. The fees of the guardian ad litem shall be paid by defendant.

(h) The attorney or non-attorney representative, minor, parent, guardian, or next friend, will ordinarily be required to appear in all cases in support of the petition unless attendance has been excused by the court upon prior motion of counsel or upon the court's review of the file. In all cases where the minor has not actually been represented in the negotiation of the settlement, the minor, parent, and the next friend or guardian shall be required to appear with the attorney or non-attorney representative for the minor.

(i) A full medical report, including a recent and detailed prognosis from the attending physician, will ordinarily be required. "Recent" shall mean a report dated not more than 6 months prior to the date of the filing of the petition for approval of a settlement.

(j) (1) Court approval of a net settlement of $10,000.00 or less is not required by statute, however if a party desires court approval, the court's order will ordinarily be in substantially the following form:

Settlement approved. All bills listed in the petition are to be paid. Counsel fees in the amount of $_____ allowed (if settlement was actually negotiated by counsel representing the minor). The balance, amounting to $_____, shall be deposited in a savings account in the _____ Bank at _____ in the name of _____, as Trustee for _____, no withdrawals to be made prior to the 18th birthday of said minor, except on written approval of the court. Said savings institution is authorized to pay over the full amount remaining in said account to the said _____ upon satisfactory proof that he/she has reached the age of 18 years. Approval is conditional upon compliance with this order with respect to payment of bills and deposit.

(2) If the net amount of a settlement exceeds $10,000.00, court approval is required, and the Court's order will ordinarily be in substantially the following form:

Settlement approved. All medical bills and other approved expenses listed in the petition are to be paid. Counsel fees in the amount of $_____ allowed (if settlement was actually negotiated by counsel representing the minor). The balance amounting to $_____, shall be paid over to _____, as guardian over the estate of the minor.

Said funds shall, upon payment, be under the jurisdiction of the appropriate Court of Probate and shall be administered in accordance with the requirements of the Court of Probate. Any requests for withdrawal shall be addressed to the Court of Probate for its consideration.

Approval is conditional upon compliance with this order with respect to payment of bills and deposit of funds in accordance with this order.

Counsel for the minor shall be responsible for the settlement funds until said funds shall have actually been deposited in the appropriate guardianship account pursuant to the terms of this order and pursuant to the terms of the guardianship.

(k) In the event that the parties desire to enter into a structured settlement, which is defined as a settlement wherein payments are made on a periodic basis, the following rules shall also apply:

1. Counsel for the defendants shall provide the court with an affidavit from an independent certified public accountant, or an equivalent professional, specifying the present value of the settlement and the method of calculation of that value.

2. If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier meeting at least the following criteria:

(a) The annuity carrier must be licensed to write annuities in New Hampshire and, if affiliated with the liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed and regulated and must have a separate financial rating;

(b) The annuity carrier must have a minimum of $100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve;

(c) The petition shall contain the following information about the annuity and the annuity carrier:

(i) a description of the structure of the annuity arrangement;

(ii) a description of the history and size of the annuity carrier and its experience in issuing annuities;

(iii) a certificate from the New Hampshire Insurance Department stating that the annuity carrier is in good standing in New Hampshire;

(iv) whether the annuity carrier is domiciled or licensed in a state accredited by the National Association of Insurance Commissioners under that organization's Financial Regulation Standards program; and

(v) the annuity carrier's most recent ratings from at least two of the commercial rating services listed in subparagraph (d);

(d) The annuity carrier must have one of the following ratings from at least two of the following rating organizations:

(i) A.M. Best Company: A++, A+, A, or A-;

(ii) Moody's Insurance Financial Strength Rating: AAA or AA;

(iii) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AAA, AA+, AA, or AA-;

(iv) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AAA, AA+, AA, or AA-;

(e) The annuity carrier must meet any other requirement the court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained;

(f) The annuity carrier issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the court and the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The court shall not approve assumption reinsurance unless the reinsurer is also qualified under these rules;

(g) The annuity carrier and the broker procuring the policy shall each furnish the court with an affidavit certifying that the carrier meets the criteria set forth in subsection (d) above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall also contain the following certification: "This determination was made with due diligence by the undersigned based on rating information which was available or should have been available to an insurance broker in the structured settlement trade";

(h) In the event that the parties to the action desire to place the annuity with an annuity carrier licensed in New Hampshire which does not meet the above criteria, the court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in New Hampshire, in the full amount of the annuity obligation; and

(i) The court reserves the right to require other reasonable security in any structured settlement if the circumstances should so require.

3. The court may, for good cause shown, approve a structured settlement that does not comply with the provisions of paragraph (K). If the Court approves a settlement that does not comply with the provisions of paragraph (K), the court shall make specific findings on the record explaining the reason(s) for approving the settlement.

Source

Superior Court Rule 111

RULE 36. Dismissal of Actions

All non-jury cases which shall have been pending upon the docket for 3 years, without any action being shown on the docket other than being placed on the trial list, shall be marked “non-suit” or “dismissed” as the case may be, and notice thereof sent to the representatives who have appeared in the action.

Source

Superior Court Rule 168

RULE 37. Default

(a) Final default may be entered by the court, *sua sponte*, where appropriate, or by motion of a party, a copy of which shall be sent to all parties defaulted or otherwise.

(b) In all cases in which final default is entered, whether due to failure to file an Appearance, Answer, or otherwise, the case shall be marked "final default entered, continued for entry of judgment or decree upon compliance with Rule 37." A copy of the court's order and any subsequent orders shall be mailed to all parties, defaulted or otherwise.

(c) The non-defaulting party may then request entry of final judgment or decree, by filing a motion, together with an affidavit of damages or, in equity cases a proposed decree, and where the default is based on a failure to file an appearance, shall include an affidavit as to military service. The moving party shall certify to the court that a copy of all pleadings has been mailed to the defaulting party and shall include a notice that entry of final judgment or decree is being sought. Any party may request a hearing as to final judgment or decree. All notices under this rule shall be sufficient if mailed to the last known address of the defaulting party.

(d) A hearing as to final judgment or decree shall be scheduled upon the request of any party. Otherwise, the court may enter final judgment or decree based on the pleadings submitted or exercise its discretion to hold a hearing depending on the circumstances of the default, the sufficiency of the pleadings and the nature of the damages sought or relief requested.

(e) If the court schedules a hearing, all parties, defaulted or otherwise, shall receive notice and an opportunity to be heard.

Source

(a)–(e) Superior Court Rule 75

RULE 38. Procedure After Trial

A motion to set aside a jury verdict shall be filed within 14 days after its rendition, and a motion to set aside any other verdict or decree shall be filed within 14 days from the date on the court's written notice with respect to same, which shall be mailed by the court on the date of the notice. In each case, the motion shall fully state all reasons and arguments relied on.

Source

Superior Court Rule 73 (modified to increase the applicable period from 10 to 14 days)

RULE 39. Taxation of Costs

(a) *Costs*. Costs shall be allowed as of course to the prevailing party as provided by these rules, unless the court otherwise directs.

(b) *Taxation of Costs*. Upon written request, the court shall tax costs in any case, which shall include the fees of the court and fees for service of process which are documented in the court file.

Any party claiming other allowable costs shall file a motion to allow costs together with an itemized, verified bill of all costs requested, to be ruled upon by the court. Any party aggrieved by the court's order concerning costs may appeal therefrom within 30 days from the date of notice of such order, regardless of whether an appeal concerning the underlying judgment is sought.

(c) *Allowable Costs*. The following costs shall be allowed to the prevailing party: Fees of the court, fees for service of process, witness fees, expense of view, cost of transcripts, and such other costs as may be provided by law. The court, in its discretion, may allow the stenographic cost of an original transcript of a deposition, plus one copy, including the cost of videotaping, and may allow other costs including, but not limited to, actual costs of expert witnesses, if the costs were reasonably necessary to the litigation.

Source

(a)–(c) Superior Court Rule 87

RULE 40. Appeals and Transfers to Supreme Court

(a) Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall seasonably prepare and file with the trial court the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 and Supreme Court Rule 9, and after the court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to the clerk or register thereof.

(b) In all actions in which a verdict or decree is entered, or in which a motion for a nonsuit or directed verdict is granted, or in which a bill in equity is dismissed, or in which any motion is acted upon after verdict or decree, all appeals relating to the action shall be deemed waived and final judgment shall be entered as follows, unless the court has otherwise ordered, or unless a Notice of Appeal has then been filed with the Supreme Court pursuant to its Rule 7:

1. Where no motion, or an untimely filed motion, has been filed after verdict or decree, on the 31st day from the date on the court's written notice that the court has made the aforementioned entry, grant or dismissal; or

2. Where a timely filed motion has been filed after verdict or decree, on the thirty-first day from the date on the court's written notice that the court has taken action on the motion.

(c) The court shall not grant any requests for extensions of time to file an appeal document in the Supreme Court or requests for late entry of an appeal document in the Supreme Court; such requests shall be filed with the Supreme Court. *See* Supreme Court Rule 21(6).

(d) In civil actions in which a mistrial is declared, appeals from the denial of motions for nonsuit or directed verdict shall not be transferred to the Supreme Court before verdict following further trial unless the court shall approve an interlocutory appeal pursuant to Supreme Court Rule 8.

(e) When the Supreme Court orders that a transcript be prepared, if a question of law is transferred by appeal, the appealing party shall advance the estimated cost of the transfer, and the expense of such transfer shall be taxed in his bill of costs if he shall prevail; but if transferred by virtue of an agreement signed by the parties or otherwise without ruling, such expense shall be advanced as the court, within its discretion, may rule that justice requires.

(f) The stenographer shall transcribe the original and two copies of all the oral proceedings except opening statements, medical testimony, arguments, and charge, unless otherwise ordered by the Supreme Court.

(g) After determination of what is to be transcribed as provided by these rules and the Supreme Court rules, the Court of the Supreme Court shall notify the party liable therefor of the estimated cost to him/her at the prevailing per page rate for the original and each copy thereof, and shall notify him/her to pay the estimated cost to the court within 15 days from the date of the notice; otherwise his/her appeal shall be deemed waived; or if it is an agreed case or if otherwise transferred without ruling, the action shall be dismissed unless the other party will advance such expense within 15 days after notice, in which event he may tax it as costs if he prevails. Upon receipt of the required advance payment, the court shall notify the stenographer to proceed with the transcription.

(h) In cases tried by the court without jury or by a master or referee, the oral proceedings of the trial shall not be transcribed by the stenographer in advance of verdict or decree unless the court rules that justice so requires, and then portions thereof may be omitted as may be expressly ordered. In the event that such prior transcription is ordered, the stenographer shall prepare not less than the typewritten original and two copies thereof and the court shall determine the apportionment of the cost thereof.

Source

(a) Superior Court Rule 79
(b) Superior Court Rule 74
(c) Superior Court Rule 74
(d) Superior Court Rule 74
(e) Superior Court Rule 80
(f) Superior Court Rule 80
(g) Superior Court Rule 80
(h) Superior Court Rule 80

IX. Provisional and Final Remedies

RULE 41. Attachments

(a) *Attachments with Notice*. The following procedure is to be used where the plaintiff requests that the court authorize an attachment of the defendant's property, using the method requiring notice to the defendant, and an opportunity for the defendant to be heard before the court renders its decision.

1. The Motion to Attach shall be executed under oath, and accompanied with the Notice to defendant as well as a copy of the Order form.

2. The Motion to Attach shall be fastened to the face of the Complaint.

3. Copies of the Complaint are then to be given to the sheriff or his deputy for service on the defendant; immediately after such service, that Complaint, together with the sheriff's Return of Service, is to be entered with the court.

4. If the Motion to Attach is granted, the plaintiff's attorney, non-attorney representative or *pro se* plaintiff is authorized to fill out a Writ of Attachment in accordance with the Order granting the motion. If permission is granted to make a real estate attachment, the attachment Writ together with the court's Order thereon may be served on the Registry of Deeds by the sheriff, or his deputy, the plaintiff, his attorney or any other person to effect the real estate attachment. To effect all other attachments, the Attachment Writ together with the court's Order thereon must be served by the sheriff, or his deputy. The Return of Service is to be filed immediately on completion of the attachment. No additional service upon the defendant is required to perfect an attachment, provided that a Notice of Intent has been served upon the defendant as provided in RSA 511-A:2.

(b) *Attachments without Notice (Ex Parte).* The following procedure is to be used where the plaintiff requests permission to attach using the method that does not require notice to the defendant prior to the attachment:

1. The Motion for Attachment shall be executed under oath, and accompanied with the Notice to defendant and Order form;

2. The motion, and copies, are to be filed in court, and an entry fee paid;

3. If the motion is denied, the plaintiff may move for attachment under the provisions of RSA 511-A:3.

4. If the motion is granted, the plaintiff or his representative is authorized to prepare a Writ of Attachment in accordance with the Order granting the request.

5. A certified copy of the Motion, the Notice to the defendant, and the Court's order thereon shall be fastened to the face of the Writ of Attachment.

6. The Writs of Attachment and Summons, together with copies, shall be delivered to the sheriff with directions to serve the writ of attachment first, within the time directed by the court's order, and immediately thereafter the writ of summons. In those cases where permission is granted to make a real estate attachment, the Attachment Writ together with the court's Order thereon may be served on the Registry of Deeds by the sheriff, or his deputy, the plaintiff, his attorney or any other person to effect the real estate attachment before the Writs of Attachment and Summons, together with copies, are delivered to the sheriff. The Returns of Service are to be filed immediately after service has been completed.

Source

(a) Superior Court Appendix

RULE 42. Injunctions

(a) *Temporary Restraining Order; Notice; Hearing; Duration.* A Temporary Restraining Order may be granted without written or oral notice to the adverse party only if (1) it clearly appears to the court in which the action is pending from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and (2) the applicant or the applicant's representative certifies to the court in writing the efforts which have been made to give the notice and/or the specific facts supporting the claim why the notice should not be required. Any hearing held without the presence of the adverse party or his or her attorney shall be recorded, unless directed otherwise by the court. Every temporary restraining order, which is granted without notice, shall be endorsed with the date and hour of issuance, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall expire by its terms within such time after issuance, not to exceed 10 days, as the court fixes, unless, within the time so fixed, the order, for good cause shown, is extended for a like period, or unless the party, against whom the order is directed, consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the application for a preliminary injunction shall be set down for hearing at the earliest possible time, and in any event within 10 days, and, when the matter comes on for hearing, the party, who obtained the temporary restraining order, shall proceed with the application for a preliminary injunction, and if he or she does not do so, the Court shall dissolve the Temporary Restraining Order. On 2 days' notice to the party who obtained the Temporary Restraining Order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) *Preliminary Injunction.*

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party and they shall only be issued by the court.

(2) *Consolidation of Hearing with Trial on Merits.* Before, or after, the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(c) *Security.* Unless the Court, for good cause shown, shall otherwise order, no Restraining Order or Preliminary Injunction shall issue except upon the giving of an injunction bond by the applicant, in such sums as the Court deems proper, for the

payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such bond shall ordinarily be required of marital cases or of the United States or of the State of New Hampshire.

(d) *Form and Scope of Injunction or Restraining Order.* Unless the court, for good cause shown, otherwise orders, an injunction or restraining order shall be specific in terms; shall describe in reasonable detail, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) *Labor Disputes and Liens.* These rules are subject to any statutory provisions relating to restraining orders and injunctions in actions involving or growing out of labor disputes and liens.

(f) Before injunctions are granted, it must appear that process at law or in equity has been filed; but, when the object of the injunction would be defeated by the delay necessary to file such process, an injunction may issue to expire on a day specified therein, unless such process be filed by such a day.

(g) Whenever an injunction is issued without notice to, or appearance by, the adverse party (except in marital cases), the party at whose request it is issued, ordinarily shall, and in any case may, be required to give bond with sufficient sureties, conditioned to pay and satisfy all such damages as may be occasioned to the adverse party by reason of the injunction, in case it shall appear that the injunction was improper.

(h) Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court (or register if in probate court) as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court (or register if in probate court), who shall forthwith mail copies to the sureties if their addresses are known.

Source

(a) Superior Court Rule 161(a)
(b) Superior Court Rule 161(b)
(c) Superior Court Rule 161(c)
(d) Superior Court Rule 161(d)
(e) Superior Court Rule 162 and 163

RULE 43. Security

(a) When the plaintiff is a non-resident, he shall furnish security for costs in such amount and within such time as the court may order.

(b) Sheriffs and deputy sheriffs are authorized to take bail in civil contempt proceedings and shall forward forthwith such bail so taken to the court of the court issuing the capias.

Source

(a) Superior Court Rule 140
(b) Superior Court Rule 143 and 205

RULE 44. Deposit in Court

(a) In proper cases, the defendant may pay into court any sum of money which he admits to be due, accompanied by the general issue as to the balance; and, if the plaintiff shall refuse to accept the same with his costs, in full satisfaction of his claim, such sum shall be struck out of the Complaint; and unless the plaintiff shall prove that a larger sum be due him, he shall have no costs, but the defendant shall be allowed costs from the time of such payment.

(b) When a sum of money is be paid into court with an interpleader action, or when a set-off, counterclaim or recoupment shall be filed and a sum of money paid into court as the balance due the plaintiff, the costs of the plaintiff up to that time shall also be paid into court; and the defendant, if he prevail, shall be allowed only his subsequent costs.

Source

(a) Superior Court Rule 60
(b) Superior Court Rule 61

RULE 45. Periodic Payments

(a) A judgment creditor seeking an order for weekly payments under RSA 524:6-a must file a Complaint with the court setting out specific grounds for relief. Issuance of a Writ of Execution need not be a preliminary step to the weekly payment process.

(b) Upon the filing of such a Complaint, an Order noticing the action and identifying a date for a hearing will issue requiring the judgment debtor to appear at a time and date named therein and submit to an examination relative to his property and ability to pay said judgment.

(c) The judgment creditor shall cause the Notice of Hearing to be served either in-hand or by certified mail, restricted delivery, return receipt requested. If the judgment creditor elects to serve the Notice of Hearing by certified mail, restricted delivery, return receipt requested, and if the return receipt is returned without indication that the Notice of Hearing has been properly served, then in-hand service shall be required.

(d) On hearing, the judgment debtor will submit a financial affidavit and will be examined under oath as to his property and ability to pay. Either party may introduce oral and written evidence as the court deems relevant. Technical rules of evidence will not apply.

(e) If the debtor fails to appear at the hearing, the court may proceed and orders may be made in the debtor's absence.

(f) If the court finds that the debtor has no property other than property that is exempt from attachment or execution and that the debtor is unable to make weekly payments on the judgment, the Complaint will be dismissed. Attendance by the plaintiff or plaintiff's counsel is not required unless ordered by the court.

(g) If the court is satisfied that the debtor has property not exempt from attachment or execution, the court may order the debtor to produce it, or so much thereof as may be sufficient, to satisfy the judgment and cost of the proceedings, so that it may be taken on execution. If the debtor is able to make weekly payments on the judgment, the court may, after allowing the debtor an appropriate amount for his support and that of his family, if he has a family, order the debtor to make weekly payments on the judgment from time to time. The court may also make an Order combining any of the orders above mentioned.

(h) The court may prescribe the times, places, amount of payments and other details in making any of its orders. The court may at any time review, revise, modify, suspend or revoke any order made. Failure to obey any lawful order of the court, without just excuse, shall constitute a contempt of court. Contempt proceedings will be initiated by the creditor by a verified petition, and will be

handled in a manner similar to support proceedings, except that they will be instituted by summons rather than a capias.

(i) A sentence for contempt shall not end the proceedings nor any order made by the court, and future violations of the order, upon which the sentence was founded, may likewise be dealt with as for contempt.

(j) If the Complaint is dismissed, the creditor shall not file within one year after the date of such dismissal another petition against the same debtor upon the same judgment unless the court otherwise for good cause orders.

(k) RSA 524:6-a is construed, until further order, as applying only to Judgments entered after the effective date of the statute (July 20, 1975.)

Source

This language is consistent with RSA 524:6-a. Subsection c is the language currently in District Court Rule 1.21(2).

RULE 46. Enforcement

(a) *In General***.** Process to enforce a judgment for the payment of money shall be a Writ of Execution, unless the court directs otherwise. The proceedings on and in aid of execution shall be in accordance with applicable statutes. In aid of the judgment or execution, the judgment creditor or the judgment creditor's successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules. Process to enforce a judgment for the delivery of land shall be a Writ of Possession.

(b) *Contempt and Arrest*. Parties may be arrested upon order of Court and required to give bonds for appearance and to abide the order of Court in any case where it shall be deemed necessary. Sheriffs and deputy sheriffs are authorized to take bail in civil contempt proceedings and shall forward forthwith such bail so taken to the court issuing the capias.

(c) *Criminal Contempt.*

(1) *Summary Disposition.* A direct criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. Oral notice of the conduct observed must be given by the judge and the contemnor given an opportunity to speak in his defense. The Order of Contempt shall recite the adjudication and sentence and shall be signed by the judge and entered of record. The disposition, when imposed, shall also be entered on a separately numbered State v. (The Contemnor) file.

(2) *Disposition Upon Notice and Hearing*. An indirect criminal contempt shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of an attorney for the State or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to admission to bail as provided by statute. In a proceeding under this subdivision, if the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt, the court shall enter an order fixing the punishment.

Source

(a) New
(b) Superior Court Rules 142 and 143
(c) Superior Court Rule 95

X. Special Proceedings

RULE 47. Special School and Town Meetings

All complaints requesting permission to hold special school district or town meetings must set forth the facts alleged to create an emergency requiring an immediate expenditure of money and also the specific articles to be inserted in the warrant in the event such permission is granted.

A sample complaint is set forth below:

Decree For Special Town Meeting.

The above entitled complaint came before the Court for hearing and the Court, having considered the evidence, finds that an emergency has arisen in the Town of _____ which may require an immediate expenditure of money.

It is hereby ordered, adjudged and decreed that the Selectmen of the Town of _____ are hereby authorized to hold a Special Town Meeting (insert time and place of meeting), for the purpose of acting upon the article(s) set forth in the accompanying petition, and the Special Town Meeting shall have the same authority as that of an annual Town Meeting.

The above approval is conditioned upon compliance with all statutory requirements relating to posting and notice which control such a Special Meeting.

This decree is made solely for the purpose of permitting the Special Town Meeting to be held, and it is not to be construed nor interpreted in any other manner nor for any other purpose whatsoever.

Source

Superior Court Rule 123 and Appendix to Superior Court Rules

XI. Fee Schedules

Rule 48. Superior Court Fees

I. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

II. 32.8% of the entry fee paid in each libel and petition in marital cases ($41.00) shall be deposited into the special fund established by RSA 458:17-b. Said fund is for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent.

III. (a) Original Entries:

(1) Original Entry of any action except a petition for writ of habeas corpus; Original Entry of all Marital Matters, Including Order of Notice and Guardian ad Litem Fee; Transfer; the filing of a foreign judgment pursuant to RSA 524..... $ 125.00

(2) Original Entry of a petition for writ of habeas corpus.. $ 0

(b) Small Claim Transfer Fee..... $ 90.00

(c) Motion to Bring Forward (post judgment) .....$ 50.00

(d) Petition to Annul Criminal Record.....$ 50.00

(e) Wage Claim Decision.....$ 25.00

(f) Marriage Waiver.....$ 25.00

(g) Motion for Periodic Payments.....$ 15.00

(h) (1) Divorce Certificate (VSR) only.....$ 5.00

(2) Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation QDRO, USO, and other Decree-related Documents.....$ 15.00

(i) Certificates and Certified Copies.....$ 5.00

(j) All Copied Material.....$ .50/page

IV. On the commencement of any custody or support proceeding for which a fee is required, including libels for divorce with minor children, an additional fee of $2.00 shall be paid by the petitioner.

V. Pursuant to RSA 490:24, II, the sum of $20.00 shall be added to the fees set forth in paragraphs (III)(A)(i), (III)(C), and (III)(F) above.

VI. Records Research Fees:

(a) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(b) A fee of $10.00 per request will be assessed for electronic (computer) searches of less than ten names.

(c) A fee of $25.00 per request will be assessed for electronic (computer) searches of ten or more names.

(d) Extensive electronic (computer) searches requiring more than one hour will be assessed $25.00 per additional hour or portion thereof.

(e) A fee of $25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.

(f) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = $10.00. Additional requirement that one or more of those seven names be manually researched as well = $25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = $35.00.

Source

Superior Court Rule 169

Rule 49. District Court Fees

I. (a) Original Entries

Civil complaint..... $75.00
Replevin..... $75.00
Landlord/Tenant entry..... $50.00
Registration of foreign judgment.....$100.00
Small claims entry $35.00

(b) General and Miscellaneous

Motion for Periodic Payments..... $15.00
Petition to annul criminal record.... $50.00
Original writ.....$1.00 ea.

(c) Certificates and Copies

Certificate of Judgment.....$10.00
Exemplication of Judgment.....$50.00
Certified copies.....$5.00
All copied material (except transcripts) $ .50/page
Computer screen printout.....$ .50/page

II. Surcharge. Pursuant to RSA 490:24, II, the sum of $20.00 shall be added to the fees set forth in paragraph (I)(A) above.

III. Records Research Fees.

(a) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(b) A fee of $10.00 per request will be assessed for electronic (computer) searches of less than ten names.

(c) A fee of $25.00 per requests will be assessed for electronic (computer) searches of ten or more names.

(d) Extensive electronic (computer) searches requiring more than one hour will be assessed $25.00 per additional hour or portion thereof.

(e) A fee of $25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.

(f) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = $10.00. Additional requirement that one or more of those seven names be manually researched as well = $25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = $35.00.

Source

District Court Rule 3.3

Rule 50. Probate Court Fees

I. (a) Original Entry of any action.....$130.00

(b) Petition File and Record Authenticated. Copy of Will, Foreign Wills; Petition Estate Administration for estates with a gross value greater than $25,000; Petition Administration of Person Not Heard From; Petition Guardian, Foreign Guardian or Conservator (RSA 464-A).....$105.00

(c) Petition Termination of Parental Rights; Petition Involuntary Admission; Petition Guardian Minor Estate and Person and Estate (RSA 463); Petition Guardian of Incompetent Veteran (RSA 465).....$80.00

(d) Petition Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination); Motion to Reopen (estate administration); Motion to Bring Forward..... $55.00

(e) Petition Estate Administration for estates having a gross value of $25,000 or less; Petition Change of Name (includes one certificate); Petition Guardian Minor Person (RSA 463).....$30.00

(f) Marriage Waiver..... $25.00

(g) Motion Prove Will in Common and/or Solemn Form (administration required); Motion to Re-examine Will.....$105.00

(h) Petition Appoint Trustee.....$80.00

(i) Motion Successor Trustee, Administrator, Executor, or Guardian of Estate and Person and Estate (RSA 463) (RSA 464-A); All Executor/Administrator Accounting for estates with a gross value greater than $25,000; Trustees Accounting; Guardian/ Conservator Accounting.....$55.00

(j) Petition Change of Venue (includes authenticated copy fee); Motion Successor Guardian of Person (RSA 463) (RSA 464-A); Motion Sue on Bond; Motion Remove Fiduciary; Motion Fiduciary to Settle Account.....$30.00

(k) Pursuant to RSA 490:24, II, the sum of $20.00 shall be added to the fees set forth in subsections (a), (b), (c), (d), (e), and (f) above.

II. ENTRY FEES INCLUDE:

Preparation and issuance of Orders of Notice, Notice, Copies of Decrees, mailing costs, certificate to discharge surety.

III. ENTRY FEES DO NOT INCLUDE:

Notice by publication. This fee shall be paid by the Party or the Attorney for the Party from whom the notice is required. The cost of publication shall be determined by the Register of each county. The request may require that payment be made directly to the publisher of the notice.

In-hand service. If service by a law enforcement officer is required, the Party or the Attorney for the Party from whom the notice is required shall pay the cost of service to the appropriate county sheriff's department.

Additional copies. If additional copies of any document, or additional certificates are requested beyond those included in normal processing as indicated above, the Party or the Attorney for the Party requesting the additional copies shall pay the costs in advance as indicated under "Certificates & Copies."

IV OTHER:

Defaults (RSA 548:5-a).....$25.00/each occurrence

Citations/show cause (RSA 548:5-a and 550:2).....$50.00/each occurrence

Duplicate Audio Tape.....$25.00/each tape

V. CERTIFICATES & COPIES:

Certificates.....$5.00

Certification.....$5.00 plus copy fee

Photocopy of Will.....$1.00/page

All other copied material.....$ .50/page

Authenticated Copy of Probate.....$25.00/each

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

Source

Probate Rule 169

XII. PHOTOGRAPHING, RECORDING AND BROADCASTING

Rule 52. Photographing, Recording and Broadcasting

(a) The presiding the court should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public. The presiding the court may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the presiding the court, no person shall within the courtroom take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(b) Official court reporters and authorized recorders, are not prohibited by section (a) of this rule from making voice recordings for the sole purpose of discharging their official duties.

(c) *Proposed Limitations on Coverage by the Electronic Media.* Any party to a court proceeding – or any other interested person – shall notify the court at the inception of a matter, or as soon as practicable, if that person intends to ask the court to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the court in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the presiding the court shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the presiding the court *sua sponte* proposes a limitation on coverage by the electronic media. A copy of the court's order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the court's order to its members and inform them of upcoming deadlines/hearing.

(d) *Advance Notice of Requests for Coverage*. Any requests to bring cameras, broadcasting equipment and recording devices into a New Hampshire courtroom for coverage of any court proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the court, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the court will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited. This rule and procedures also apply to all court proceedings conducted outside the courtroom or the court facility.

(e) *Pool Coverage*. The presiding the court retains discretion to limit the number of still cameras and the amount of video equipment in the courtroom at one time and may require the media to arrange for pool coverage. The court will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(1) It is the responsibility of the news media to contact the court in advance of a proceeding to determine if pool coverage will be required. If the presiding judge has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the court, to determine which news outlet will serve as the "pool." Disputes about pool coverage will not ordinarily be resolved by the court. Access may be curtailed if pool agreements cannot be reached.

(2) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the court retains the discretion to rotate media representatives into and out of the courtroom.

(f) *Live Feed.* Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(g) *Exhibits*. For purposes of this rule, access to exhibits will be at the discretion of the presiding judge. The court retains the discretion to make one "media" copy of each exhibit available in the office of the court clerk or Register.

(h) *Equipment*. Exact locations for all video and still cameras, and audio equipment within the courtroom will be determined by the presiding judge. Movement in the courtroom is prohibited, unless specifically approved by the presiding judge.

(1) Placement of microphones in the courtroom will be determined by the presiding judge. An effort should be made to facilitate broadcast quality sound. All microphones placed in the courtroom will be wireless.

(2) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the presiding judge.

(i) *Restrictions*. Unless otherwise ordered by the presiding judge, the following standing orders shall govern.

(1) No flash or other lighting devices will be used.

(2) Set up and dismantling of equipment is prohibited when court is in session.

(3) No camera movement during court session.

(4) No cameras permitted behind the defense table.

(5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the presiding judge at the bench. Any such recording is prohibited.

(6) During their term of jury service, jurors will not be photographed in connection with said service.

(7) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the trial participant voluntarily approaches the camera position.

(8) All reporters and photographers will abide by the directions of the court officers at all times.

(9) Broadcast or print interviews will not be permitted inside the courtroom before or after a proceeding.

(10) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(11) Appropriate dress is required.

Source

Superior Court Rule 78

STANDARD SUMMONS FORM

_____, ss. _____ COURT

v.

SUMMONS IN CIVIL ACTION

CASE NUMBER:

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Court and serve on Plaintiff's Attorney (name and address)

an Answer to the Complaint which is served on you with this Summons, or a Motion to Dismiss, within 30 days after the Return Date noted below. If you fail to file a timely Answer or Motion to Dismiss, a default will be taken against you for the relief demanded in the Complaint.

_____ _____

Clerk Date Filed

_____ _____

(By) Deputy Clerk Return Date

RETURN OF SERVICE

Service of the Summons and complaint was made by me Date: _____

NAME OF SERVER TITLE

_____ _____

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served:

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

☐ Returned unexecuted:

☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL: SERVICES: TOTAL:

DECLARATION OF SERVER

I declare under penalty of perjury that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date Signature of Server

_____
Address of Server

APPENDIX B

Adopt new Rules of Probate Administration as follows:

NEW HAMPSHIRE RULES OF PROBATE ADMINISTRATION

TABLE OF CONTENTS

Rule 1. Definitions

The following defined terms were developed to ensure clarity and consistency and are capitalized when used in a rule.

Administrator: The word Administrator includes every Person to whom an administration of an estate has been granted, including administrators and executors.

Answer: A written response to a Petition. However, an Answer is not the only acceptable written response to a Petition, other examples would be a motion to dismiss or an objection.

Appearance (General): A written document filed by, or on behalf of a Party, pursuant to Rule 14, submitting to the jurisdiction of the Court.

Appearance (Special): An Appearance filed with the Court for the sole purpose of determining jurisdiction.

Attorney: Any person (a) admitted to practice law in New Hampshire, (b) allowed to appear in New Hampshire courts under *pro hac vice* (Rule 19) status, or (c) authorized by another under a power of attorney, usually referred to as an attorney-in-fact.

Beneficially Interested: As defined in RSA 550:12.

Cause: Any matter filed with the Court which requires the filing of an Appearance.

Court: Probate Court

Fiduciary: The word fiduciary includes every Person appointed to act as an administrator, executor, guardian, conservator, or trustee.

Motion: A written Pleading or oral request to the Court requesting the Court to take particular action.

Party: Any Person whose name is designated on the record to a proceeding as a Petitioner, Respondent, guardian ad litem or any other person or legal entity who has filed an Appearance, also referred to as a Party appearing of record.

Person: A natural person or any legal entity.

Petition: A written Pleading that initiates a proceeding.

Petitioner: A Party who initiates a proceeding.

Pleading: A Petition, Motion, objection, Answer, account or inventory filed with the Court requesting action by the Court.

Power of Attorney: An instrument signed by a Party, witnessed and acknowledged before a Justice of the Peace or Notary Public, authorizing an individual to act on behalf of the Party to do a particular act, appear in a particular matter, or for the general transaction of business.

Proof of Assets: Documentation that demonstrates that a ward has sole ownership of the assets. An example of documentation for savings, checking, certificates of deposit, and/or any other accounts, may be a photocopy of the current statement that shows the balance and the complete account title and ownership information.

Pro Se Party: A Party who does not retain an Attorney but appears personally.

Register: Register of Probate

Respondent: A Party who responds to a Petition.

Return Day: The date upon which Petitions are returnable to the Court. It is usually the first Tuesday of any month unless otherwise ordered by the Court. The Return Day is selected to create the time limits people are given in which to respond.

Tangible Personal Property: Property of material substance such as, goods, wares and merchandise.

Source

Probate Court Rule 1

Rule 2. Transcripts

(a) **Request that Proceedings be Recorded**. A Party may request that any probate proceedings be recorded. Such request shall be made in writing to the Court no later than ten (10) days prior to the proceeding. Any denial of a request for recording shall include the reason(s) supporting the denial. A request for recording, not timely filed, may be granted within the discretion of the Court.

(b) **Official Record**. For all purposes, including Supreme Court Rules 13-15, the official record of a recorded probate court proceeding shall be the printed transcript of the proceeding as prepared by an approved transcriber or stenographer at the request of the Register.

(c) **Transcripts for Appeal**. The Party or Parties shall advance the estimated cost of the transcript as ordered by the Court. Upon receipt of the required advance payment, the Register shall direct the transcriber or stenographer to proceed with the transcription.

(d) **Request for Excerpts**. During the course of a trial, either party may request to have parts of the evidence transcribed for use during the trial. The furnishing of a transcript or excerpts from the evidence is to be done under the direction of the probate judge or probate master.

(e) **Transcripts Required for Other than Appeal**. In the event there is a Motion for a transcript of a proceeding, either partial or complete, by a Party to the proceeding or other interested Persons, for purposes other than appeal, that purpose shall be stated in the Motion.

When a Motion for transcript is granted, any other Party desiring a copy shall notify the Court within ten (10) days of the Register's notice. After the ten-day period has elapsed, the Register shall proceed in the usual manner to compute the estimated cost of the transcript and require the Party or Parties to advance this amount. Upon receipt of the required advance payment, the Register shall direct the transcriber or stenographer to proceed with the transcription.

When completed, if the transcriber or stenographer's bill exceeds the estimated payment, the Register shall collect the additional cost before releasing the transcript(s). The original shall be retained by the Register.

(f) **Transcript Order by Court, Master or Referee**. If a complete or partial transcript of any proceeding is ordered by a probate judge or probate master, the transcriber or stenographer shall prepare an original and such copies as ordered. The Register's office shall provide the probate judge or probate master with a copy

and retain the original and any other copies. Neither the original nor any copy shall be defaced in any way so that they may be used in the event of subsequent appeal.

(g) **Special Circumstances**. Any and all of the outlined procedures for preparation of transcripts may be amended at the discretion of the Court in special circumstances; *e.g.* when there is a limited time available for processing an appeal, etc.

Source

Probate Court Rule 78-A

Rule 3. Duplication of Audio Tapes

(a) Upon receipt of a Motion to the Court for a duplicate audio tape of a recorded probate court proceeding, the probate judge or probate master who presided over the proceeding shall either (1) direct the Register to release a copy of the audio tape to the Person, or (2) deny the Motion. Any denial of a Motion for a duplicate audio tape shall include a statement of reason(s) supporting the denial.

(b) In the case of any probate court proceeding made CONFIDENTIAL by New Hampshire statute, case law, or court order, no duplicate audio tape shall be released, except to a Party to the proceeding or to an Attorney for a Party to the proceeding. In such cases, the Party or Attorney shall sign a "Receipt for Duplicate Audio Tape of Confidential Probate Proceeding."

STATE OF NEW HAMPSHIRE

_____ COUNTY PROBATE COURT

IN RE: _____

DOCKET NUMBER: _____

RECEIPT for DUPLICATE AUDIO TAPE of
CONFIDENTIAL PROBATE PROCEEDING

I acknowledge receipt of a duplicate audio tape of a CONFIDENTIAL probate proceeding in this case.

As a condition of the receipt of this duplicate audio tape, I shall take all reasonable actions to ensure that the CONFIDENTIALITY of the proceeding, including the CONFIDENTIALITY of this audio tape, is preserved. Those actions shall include the following:

I shall not reproduce this audio tape in any form.

I shall not release this audio tape, or a copy of this audio tape, to anyone.

I shall not allow anyone to listen to this audio tape, except for a Party to this proceedings, Attorney for a Party to this proceeding, or a Person with a court order authorization to listen to this audio tape.

DATE: _____ SIGNATURE: _____

(c) The fee for each duplicate audio tape shall be $25.00, payable to the Register.

Source

Probate Court Rule 78-B

Rule 4. Fees and Expenses: Fiduciary and Attorney

Fees and expenses of Fiduciaries and Attorneys shall be subject to the approval of the Court. In all cases, fees and expenses shall be reasonable for the work, responsibility, and risk. Factors used to determine the reasonableness of a fee may include the time and labor required, the size of the estate, the requisite skill, the customary fee, a fee agreement, the results obtained, time limitations, and the length of the professional relationship.

Source

Probate Court Rule 88

Rule 5. Change of Venue

Venue of any Probate administration or other proceeding may be changed from the Probate Court of one county, hereafter called "transferring Court," to the Probate Court of any other county, hereafter called "receiving Court." Upon Petition or Motion to both Courts and sufficient proof of inconvenience, change of residence of a principal Party to the proceeding, or other good cause shown, in the discretion of the transferring Court, venue may be changed subject to acceptance by the receiving Court.

Once the transferring Court has granted and the receiving Court has accepted the change of venue, the transferring Court shall forward the original file of the Probate records to the receiving Court and retain a copy, unless, as a part of the order of transfer or acceptance, only a specified part of the original file is transferred or ordered reproduced and authenticated. Upon the change of venue, the transferring Court shall give notice to all interested Parties of the change of venue and notice that all future Pleadings shall be filed with the receiving Court.

Whenever transfer is made of the administration of a decedent's estate, a guardianship, a conservatorship, or other proceeding where a bond is pending in the transferring Court, the bond shall remain in effect unless or until specifically discharged by the receiving Court. In those cases where a new bond is required by the receiving Court, the transferring Court may discharge the original bond.

To effect a change of venue, the following must occur:

1. A motion shall be filed in the transferring Court.

2. The Motion must be granted by the transferring Court.

3. A Petition to accept the transfer must be filed in the receiving

4. A Petition to accept the transfer must be granted by the receiving Court.

5. The Petitioner shall notify the bonding company of the proposed transfer.

6. The Petitioner shall file with both Courts the written assent from the bonding company to the transfer, or file a new bond with the receiving Court.

Jurisdiction of a Probate matter may be transferred out of state by following the procedure outlined above, except that the transferring Court shall forward certified copies of the file to the receiving Court and shall retain the original file.

Source

Probate Court Rule 115

Rule 6. Accounts

(a) Fiduciary Accounting Standards

The following standards shall be applicable to all interim and final accountings of Administrators, trustees, guardians and conservators, required or permitted to be filed with the Court.

A. Accounts shall be stated in a manner that is understandable by Persons who are not familiar with practices and terminology peculiar to the administration of estates, trusts, guardianships and conservatorships.

1. All accounts shall be rendered on a cash basis, except in extraordinary circumstances upon specific written order of the Court.

2. All accounts shall be rendered for a specified period, with an indicated opening and closing date. Such period shall be for not more than twelve months ending on the last day of a calendar month, unless otherwise ordered by the Court. A first accounting shall begin on the date of appointment and end on the last day of the calendar month next preceding the anniversary month of appointment, unless a shorter period is specified in such accounting, or unless otherwise modified upon appropriate Motion to the Court. Accounts subsequent to the first account shall be for periods of twelve (12) months. An accounting other than a first account may be for a shorter period if it is appropriate because a specified event (such as death of a beneficiary or ward; closing the estate; or date specified in the applicable Court order or will) occurs, resulting in a change in the responsibilities or duties of the Fiduciary.

3. For Administrators, accounts shall list all receipts by source (other than the principal value of real estate, unless the real estate has been actually sold by the Fiduciary) and all disbursements by payee. Gains and losses on disposition of property shall be netted and reported with receipts.

4. For trustees, accounts shall list separately all receipts and disbursements of principal by source and by payee; and all receipts and disbursements of income by source and by payee. Gains and losses on disposition of property shall be netted and reported with receipts of principal.

5. For guardians and conservators, accounts shall list separately all receipts by source and all disbursements by payee. Gains and losses on disposition of property shall be netted and reported with receipts. For each asset comprising the reported "Balance in Hands of Fiduciary," excluding all Tangible Personal Property, the Fiduciary shall provide Proof of Assets.

6. All accountings shall be capable of being understood by a Person of average intelligence, literate in English, and familiar with basic financial terms, and who has read the accounting with care and attention.

7. The use of terms of special meaning, such as "debit" or "credit" or abbreviations, should be avoided or explained.

B. A Fiduciary account shall begin with a concise summary of its purpose and content. The account shall begin with a brief statement identifying the Fiduciary, the subject matter, the relationship of Parties interested in the account to the account, and, if applicable, appropriate notice of any limitations on or requirements for action by Parties interested in the account. The following information shall be provided.

1. The sequence of the account (first, second, etc.) and identification of a final account as such.

2. The period covered by the account, with an indicated opening and closing date (*i.e.*, the accounting period).

3. Identification of the Fiduciary by name; title (executor, administrator, etc.); mailing address; and telephone number through which Fiduciary may be contacted.

4. At the Fiduciary's option, a statement of the purposes of filing the account.

5. Identification of the Attorney, if any, representing the Fiduciary by name; business address; and telephone number.

6. Identification of the Parties interested in the account as of the date of filing, by name; capacity in which interested in the account (remainderman, income beneficiary, ward, heir-at-law, etc.); and last known residence or business address.

7. A summary of the total receipts, total disbursements and total balance on hand at the end of the account, all expressed in dollar values, supported by schedules in the account.

C. A Fiduciary account shall contain sufficient information to put parties interested in the account on notice as to all significant transactions affecting administration during the accounting period.

1. The first account of a Fiduciary shall detail the items received by the Fiduciary and for which the Fiduciary is responsible. The account shall not simply refer to the total amount of an inventory filed separately or assets described

in documents other than the account itself. Tangible Personal Property may be referred to in summary form; provided, however, that such summary designates where detailed lists of the applicable Tangible Personal Property may be located.

2. In second and subsequent accounts, the opening balance shall not simply refer to the total value of assets on hand as shown in detail in the prior account, but shall list each item separately. Tangible Personal Property may be referred to in summary form, as in the manner prescribed for first accounts.

3. Transactions shall be described in sufficient detail to give Parties interested in the account notice of their purpose and effect.

4. All balances on hand shall be itemized, on a separate schedule.

5. When filing the final account in the administration of an intestate estate, if the balance passes to more than one heir, the Fiduciary shall file a separate schedule listing in detail the computation and satisfaction of disbursements provided under the laws of intestacy, in order to reconcile the aggregate of such disbursements.

6. Compensation of Attorneys, professionals, and Fiduciaries shall be shown separately in summary form, unless otherwise ordered by the Court. Extraordinary administrative costs (such as appraisals, ancillary administration expenses, etc.) shall be shown separately and explained. Administrative costs of Court and other fees, postage, copying, telephone toll charges, and similar routine out-of-pocket expenses may be shown in summary form.

7. With regard to disposition of real estate by a Fiduciary, the Fiduciary shall show the date of disposition, the gross sales price or disposition value, plus all adjustments to such price or value incident to the disposition, including costs of sale and applicable real estate and transfer taxes, to permit ready determination, by Parties interested in the account, of how the net sale proceeds received by the Fiduciary were calculated.

8. With regard to gains and losses on disposition of property, the Fiduciary shall provide with regard to each disposition the date of disposition, proceeds of disposition and book value or cost of the disposed property.

9. Interest and penalties paid in connection with late filing of tax returns, late payment of tax liabilities, of any nature, probate citations for late filing or failure to file reports or accountings, shall be shown separately and explained.

10. An extraordinary allocation between principal and income shall be separately stated and explained.

11. If the Fiduciary makes an allocation, such as the computation of a formula marital deduction gift, involving non-probate assets, it shall be explained in detail; provided, however, that the non-probate assets involved in such computation may be stated in summary form.

12. No disbursements for administrative expenses shall be listed as "estimated" or "reserved" without explanation.

D. A Fiduciary account shall include both book value or cost of assets and current values of such assets at the beginning and end of the accounting period.

1. "Book value" (a) for Administrators, shall be the value of the property at the date of death; (b) for trustees, shall be the book value of the prior Fiduciary from whom the property was received; and (c) for guardians and conservators, shall be the value of the property at the date of appointment.

2. "Cost" shall be the consideration given or paid by a Fiduciary with regard to property initially acquired by the Fiduciary.

3. If book values at initial valuation cannot be readily determined, the values used shall reflect a thoughtful decision by the appraiser; and the explanation of the principal factors determining such decision shall be set forth in the account in which such values are first reported.

4. If current values for interim or final accountings cannot be readily determined, the values used shall reflect a good faith judgment by the Fiduciary; and the explanation of the principal factors determining such decision shall be set forth in the account. Such valuation shall be subject to approval of the Court.

5. Book value or cost shall not normally be adjusted for depreciation except upon specific written order of the Court.

6. Book value based on date of death may be adjusted to reflect federal valuation elections or changes on audit of the estate or inheritance tax returns, upon appropriate Motion to the Court.

7. A successor Fiduciary or co-Fiduciary may adjust the book value or cost of assets to reflect values at the start of the administration of, or subsequent receipt of assets by, the successor Fiduciary or co-Fiduciary, upon appropriate Motion to the Court.

8. Assets received in kind by a Fiduciary in satisfaction of a pecuniary legacy shall be carried at the value used for the purposes of such disbursement.

9. Current values for the beginning and closing dates of the accounting period shall be determined by the same methods used to determine book value, or by reference to readily determinable fair market valuing techniques (for example, market values for readily traded securities; principal balance for certificates of deposit, etc.); provided, however, that any variations in valuing method shall be explained.

10. Accounts of the administration of any decedent's estate need not reflect current values of assets at the end of the accounting period.

11. When an asset is held by a trustee, guardian or conservator, under circumstances that make it clear that it is not likely to be disposed of (for example, a residence held for the use of a beneficiary), the Fiduciary may report an estimate of current value; provided, however, that the Fiduciary discloses the use of an estimate and the Fiduciary's basis for the estimate used.

E. The account shall show significant transactions that do not affect the amount for which the Fiduciary is accountable.

1. The schedule listing such transactions shall consist of an information schedule, which shall be set forth at the end of the other schedules required in an account, setting forth each transaction by a separate number.

2. All changes in investments not reflected as gains or losses reported on other schedules of receipts shall be listed. These would include, but not be limited to, stock dividends; stock splits; changes in name; exchanges; or reorganizations.

3. All new investments made within the accounting period, and in hand at the close thereof, shall be noted on the schedules of assets on hand at the close of the accounting period. Totally new investments, and increased or additional investments in the same investment as shown on the schedules of assets on hand at the beginning of the accounting period of the account, shall be separately designated or annotated.

4. With regard to book accounts, notes or installment obligations (whether secured or not), detail regarding collections or payments shall be provided to permit reconciliation of the balances shown on schedules of assets on hand at the beginning and the close of the accounting period.

5. The Fiduciary shall also report on the information schedule the details of any events causing or resulting in a change in the manner, method or course of the Fiduciary's administration. Such events would include, but not be limited to, death of an interim income beneficiary; shifting enjoyment of the income to another beneficiary; death of a remainderman during the course of administering

an estate; or a beneficiary reaching a designated age, after which time the beneficiary has a right to mandate partial withdrawals of principal.

(b) **Failure to Object**

When a copy of an account is sent to a Party or a Beneficially Interested Person, failure to object within thirty (30) days after the date the account is filed in the Court, shall act as a waiver of the right to object to the account and the right to any further notice concerning any hearing on the account.

(c) **Personal Attendance**

All Fiduciaries shall appear at any hearing upon their accounts, unless excused by the Court.

Source

(a) Probate Rule 108
(b) Probate Rule 108-A
(c) Probate Rule 108-B

Rule 7. Adoption

(a) **Personal Attendance**. The Petitioner(s) and the individual to be adopted shall appear at the hearing on the adoption, unless the presence of either is excused by the Court for good cause shown.

(b) **Foreign-Born Child.**

A. Unless the Court orders otherwise, for purposes of RSA 170-B:7, VI, any one of the following documents, which indicate that the child is a foreign adoptee (IR-3 status) or the subject of a foreign guardianship awarded for the purpose of the child's adoption in the United States (IR-4 status), will be accepted by the Court as evidence that the parental rights of the parents of the proposed adoptee have been voluntarily or involuntarily terminated by the proper authorities in a foreign country:

1. An attested or certified copy of the adoptee's Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services.

2. An attested or certified copy of the proposed adoptee's alien registration card indicating either IR-3 or IR-4 status.

3. An attested or certified copy of the proposed adoptee's passport issued in his/her country of birth, with the U.S. Visa stamp affixed indicating either IR-3 or IR-4 status.

B. Unless the Court orders otherwise, for purposes of RSA 170-B:27, II, any of the documents specified in section A above, except those bearing an IR-4 status, are acceptable documentation and satisfactory evidence to establish the validity of a foreign adoption.

C. The attestation or certification of the copies deemed acceptable under the preceding sections shall be by a notary public commissioned under the laws of the jurisdiction where the act occurs and shall be substantially in the following form:

"A true copy attest

_____
Notary Public
My Commission Expires:_____
Affix Notarial Seal Here"

or, alternatively,

"I hereby certify that I have personally examined and compared this copy against the original instrument and find this copy to be a true copy of the original in every respect save this certification.

_____
Notary Public
My Commission Expires:_____
Affix Notarial Seal Here"

(c) **Proof of Birth, Guardianship Pending**

Upon filing a Petition for adoption, the Petitioner shall file, or cause to be filed, the original or a certified copy of the proposed adoptee's birth certificate. If, at the time of filing, a birth certificate has not been issued, the Petitioner may file a certificate or record of live birth, or a similar document verifying the proposed adoptee's birth.

Once the Petition for adoption, the required proof or verification of the proposed adoptee's birth, and any required consent to the adoption has been filed, the Register may, upon the Petitioner's written request, issue a written confirmation of filing which shall be in the following form:

STATE OF NEW HAMPSHIRE

COUNTY OF _____ PROBATE COURT

CONFIRMATION OF FILING

"This will serve to officially confirm that there is on file with the Registry of Probate a petition for the adoption of _____ by _____ _____, as well as a certified copy of the birth certificate or other verification of the live birth of _____ and a consent to the adoption, approved by the court, and has been filed by _____."

Where anonymity is required or the parties in interest prefer anonymity, the Petitioners may file a petition for guardianship in order to acquire, and be able to present proof of, proper authority for care, custody, and control of the child preliminary to adoption. The appointment may be qualified by such conditions as the Court deems proper and consistent with the child's best interests.

Source

(a) Probate Rule 90
(b) Probate Rule 91
(c) Probate Rule 92

Rule 8. Bonds

(a) **Corporate**

When a surety company is offered as surety on a probate bond, no such bond shall be approved unless the name of the Person executing the bond for the surety company has been certified to the Register by the insurance commissioner, or such surety company shall have filed with the Register a Power of Attorney or a certified copy thereof authorizing the execution of such bond. The Court may require proof, in the form of an affidavit or otherwise, that the Person purporting to be an officer of any surety company and executing on behalf of the company any bond, letter, or Power of Attorney, is in fact such an officer. The attorney-in-fact's name shall be printed or typed under his or her signature on the bond.

(b) **Personal**

Personal bonds shall be used only when ordered by the Court, and no such bond shall be accepted unless the principal duly subscribes:

I, THE PRINCIPAL NAMED ABOVE, AGREE TO PAY THE JUDGE OF PROBATE THE AMOUNT OF THIS BOND IF I DO NOT FAITHFULLY PERFORM THE DUTIES OF MY OFFICE AS FIDUCIARY AS REQUIRED BY NEW HAMPSHIRE LAW. THIS OBLIGATION SHALL CONTINUE UNTIL I FULFILL ALL OF MY DUTIES AND SHALL BE BINDING ON MY ESTATE.

(c) **Change of Sureties or Penal Sum of Bond**

No change of sureties or of the penal sum (amount) of any probate bond shall be made except upon order of the Court.

(d) **Surety or Beneficiary as Appraiser or Commissioner**

No surety on the bonds of Administrators, trustees, guardians, or conservators, nor any Person Beneficially Interested in an estate, shall be appointed appraiser or commissioner of the same estate.

Source

(a) Probate Rule 103
(b) Probate Rule 103-A
(c) Probate Rule 103-B
(d) Probate Rule 104

Rule 9. Guardianship

(a) Of Minors Necessitated by RSA 464-A:42

A guardianship necessitated by the provisions of RSA 464-A:42 may be filed any time after suit has been commenced in the Superior Court or District Court, and before settlement is approved by the Superior Court or District Court. A copy of the proposed Petition to the Superior Court or District Court seeking approval of the settlement, as well as all supplemental documentation required under Superior Court or District Court rule, shall be appended to the Petition for guardian.

If the settlement contemplated at the time of the filing of the Petition for guardian, as reflected in the appended Superior or District Court Petition, proposed Petition and supplemental documentation, shall be in any manner changed prior to approval by the Superior or District Court, even if at the direction of that Court, the guardian shall immediately file a written notification with the Probate Court, with copies of the revised documentation appended.

Upon its consideration of the Petition for guardian and any subsequently filed notice of revision, the Probate Court shall consider the form or sufficiency of bond. Any alteration of bond requirements shall be at the Court's discretion.

In establishing the form and sufficiency of bond, the Probate Court shall consider the nature and amount of the asset(s), its (their) form of investment, the guardian's experience and reputation in managing property of the same or similar type as that of the guardianship, the attendant risks or volatility of the form of investment(s), any restrictions or limitations imposed upon the guardian by the Court in mitigation of waste, misfeasance or malfeasance and similar concerns related to the safety and security of the guardianship estate and its proper administration and management. After giving the consideration required, the Court, in its discretion, shall impose such bond requirements as attendant circumstances warrant.

No letter of appointment shall issue until the bond has been posted by the guardian and approved by the Probate Court. The Probate Court may require supplemental, substitute or an alteration in the bond requirements from time to time to accommodate changing circumstances of the guardianship. Upon establishment of the guardianship, a letter of guardianship shall issue which shall have appended to it a decree referencing the Probate Court's consideration of the proposed settlement in relation to the Fiduciary bond or in lieu thereof, the Probate Court shall issue a certification or provide other documentation which the guardian shall file with the Superior Court or District Court, as required under Superior or District Court rule, confirming that in setting the fiduciary bond of the guardianship, the settlement was considered.

Unless specific written Probate Court authorization is granted for alternate investment, the guardian may invest the settlement asset(s) only in accordance with RSA 463:20, :22 and :23-a.

To minimize the expense of bond requirements, the Probate Court may, in its discretion, restrict, restrain or enjoin the guardian from expending, withdrawing, encumbering or otherwise disposing of the settlement proceeds without prior written approval of the Probate Court or upon such other limitations or conditions as it may impose.

To further minimize the expenses and any attendant inconvenience the Court may, in its discretion, waive annual accounting and order accounting on such other basis as the circumstances of the guardianship may reasonably require from time to time. In the absence of a contrary order, an accounting shall be filed annually by the guardian.

All costs, expenses and fees related to the guardianship shall be paid from the guardianship estate assets subject to the approval of the Probate Court.

(b) **Procedure on Receipt of Additional Assets**

In the event that a guardian of the estate of a minor shall receive additional assets not identified in the guardian's inventory, the guardian shall file within ten (10) days after receipt, written notice with the Court containing a description of the assets received and the market value of the assets.

The Court shall review the amount of the guardian's bond in light of the additional assets received by the guardian. The Court shall order an increase in the amount of the guardian's bond if the Court determines such an increase is necessary in light of the receipt of the additional assets. Upon receipt of the Court's order the guardian shall arrange for the increase of the bond.

Source

(a) Probate Rule 111
(b) Probate Rule 111-A

Rule 10. Insolvency

Motions for Commissioner of Insolvency

All motions for a commissioner of insolvency shall include a statement of the debts due from the estate so far as can be ascertained, and the value of the real and personal property.

Source

Probate Rule 110

Rule 11. Inventories

Failure to Object

When a copy of an inventory is sent to a Party or a Beneficially Interested Person, failure to object within ten (10) days after the date the inventory is filed in the Court, shall act as a waiver of the right to object to the inventory and the right to any further notice concerning any hearing on the inventory.

Source

Probate Rule 105-A

Rule 12. Licenses

(a) Motion for License to Sell, Mortgage or Lease

When a license is required by statute, all Motions for a license to sell, mortgage, or lease real estate, or to sell personal property shall not be acted upon until the inventory in that estate has been filed and accepted by the Court. No real or personal property shall be sold for less than inventory value, unless otherwise ordered by the Court.

All Motions for a license to sell, mortgage, or lease real estate, or to sell personal property shall include the inventory value and, if different, the current market value of the property. All Motions for a license to mortgage real estate shall include the amount of the note, interest rate, and the terms of the mortgage. All Motions for a license to lease real estate shall include the amount of rent, length of the lease, and the terms of the lease.

All Motions for a license to sell, mortgage, or lease real estate, shall contain a description of the real estate sufficiently accurate to make a conveyance thereof, and shall likewise contain a reference to the book and page number of the decedent's or ward's deed or title, as recorded in the Registry of Deeds.

(b) Motions for License to Sell Real Estate to Pay Debts or Legacies

Motions for a license to sell real estate for the payment of debts or legacies must include a statement, under oath, showing the assets of the estate, the debts (and legacies, if any) due from the estate, and the estimated amount of the expenses of administration.

The Motion shall also contain a description of the real estate sufficiently accurate to make conveyance thereof, and shall likewise contain a reference to the book and page number of the deed or title of the decedent, as recorded in the registry of deeds.

(c) License to Sell, Mortgage or Lease – Notification of Proceeds

In a sale, mortgage, or lease under license, the Fiduciary shall notify the Court of the net proceeds of the sale, mortgage, or lease within thirty (30) days following receipt of such proceeds.

(d) License to Sell, Mortgage or Lease - Return

Whenever a Fiduciary has been granted a license to sell, mortgage, or lease real estate, the estate shall not be closed until the Fiduciary has filed the return of sale

with the Court. The return of sale shall indicate, under oath, the Fiduciary's actions pursuant to such license, whether or not any sale, mortgage, or lease, has been made thereunder.

(e) **Sales Without License**

No license is required in the sale of real estate when all heirs or devisees consent or when the sale is directed by the will. After any such sale, the Fiduciary shall notify the Court of the net proceeds of the sale within thirty (30) days following receipt of such proceeds.

The notification shall also contain a description of the real estate sufficiently accurate to make a conveyance thereof, and shall likewise contain a reference to the book and page number of the deed or title of the decedent or ward, as recorded in the Registry of Deeds.

Notification shall not be required from a fiduciary to whom waiver of administration has been granted.

Source

(a) Probate Rule 106
(b) Probate Rule 106-A
(c) Probate rule 106-B
(d) Probate Rule 106-C
(e) Probate Rule 107

Rule 13. Masters and Referees

(a) Retired Judges sitting as referees shall have the powers set forth in RSA 547:19-c and masters shall have the powers set forth in RSA 547:37.

(b) **Non-compliance.**

If either Party neglects or refuses to appear or to render an account, or produce any books and papers or answer on oath proper interrogatories, the master or referee shall certify the fact to the Court, and the Court shall take such action as justice may require.

(c) **Amendments and Assessment of Costs**

In actions sent to a master or referee, the hearing shall proceed according to the rules of law or equity, as the case may be, and the practice in Court. The master or referee may allow amendments in the same manner and to the same extent as if the action were tried in Court; and, when amendments are so allowed, the master or referee shall report such facts to the Court. The master or referee shall certify the costs of each Party in the hearing.

(d) **Approval by Probate Judge**

The report of a master or referee to whom a matter has been referred will be presented to the probate judge for approval and order. The decision thereafter shall be sent in accordance with Rule 61 and the Parties shall preserve their rights as though the case were originally heard before a probate judge

(e) **Questions of Law Reported**

If any question of law shall arise at the hearing before the master or referee, that question shall, at the request of either Party, appear in the master or referee's report, together with a ruling thereon.

Source

(a) Probate Rule 81
(b) Probate Rule 82
(c) Probate Rule 83
(d) Probate Rule 84
(e) Probate Rule 85

Rule 14. Termination of Parental Rights

(a) Processing and Disposition

A. Purpose. The purpose of this rule is to assure the speedy processing of Petitions for the termination of parental rights and to achieve permanent family plans for the children within the scope of RSA Chapter 170-C. This rule should in no way be considered as superseding constitutional or statutory rights of Parties to these proceedings.

B. Contents of Petition. A Petition for termination of parental rights shall include the following:

1. The name and place of residence of the Petitioner.

2. The name, sex, date and place of birth, and residence of the child.

3. The basis for the Court's jurisdiction.

4. The relationship of the Petitioner to the child, or the fact that no relationship exists.

5. The names, addresses, and dates of birth of the parents.

6. When the child's parent is a minor, the names and addresses of said minor's parents or guardian of the person.

7. The names and addresses of the following Persons:

(A) the Person having legal custody;

(B) the guardian of the person:

(i) of the parent, or

(ii) of the child;

(C) any individual acting in loco parentis to the child; or

(D) the organization or authorized agency having legal custody or providing care for the child.

8. The grounds on which termination of the parent-child relationship is sought.

9. The names of the authorized agency to whom or to which legal custody or guardianship of the person of the child may be transferred.

10. If the Petition for termination is filed subsequent to an abuse/ neglect proceeding, the names and addresses of the attorneys representing the parents and the names and addresses of any guardian ad litems appointed in the underlying abuse/ neglect case.

11. If the Petition is filed by an authorized agency, the name and address of the Attorney representing the agency and the name and address of the social worker assigned to the case.

C. Contents of Notice. The order of notice provided for in RSA 170-C:7 shall be attached to a copy of the Petition and shall include the following:

1. The statement that termination of parental rights means the loss of all rights to custody, visitation, and communication with the child and that if termination is granted, the parent will receive no notice of future legal proceedings concerning the child.

2. An explanation of the need to respond immediately to the notice, both to prepare for trial and because important hearings will take place prior to trial.

3. An explanation of how to find out the time and place of future hearings in the case.

4. Notice of right to counsel, of the procedure to follow to obtain appointed counsel, and of the role that counsel can play in Court proceedings.

5. The date, time, and place of the hearing on the Petition for termination of parental rights. The statement that a written Appearance must be filed with the Court on or before the date of the hearing, or the Respondent/parent may personally appear on the date of the hearing, or be defaulted.

6. The statement that the failure to appear personally or in writing will waive all rights to a hearing and that the Person's parental rights may be terminated at the hearing.

D. Notice. After a Petition has been filed, the Court shall set the time and place for hearing and shall give notice thereof to the Petitioner.

1. The Petitioner shall cause notice to be given to:

(a) the Respondent/parent;

(b) the guardian ad litem and/or guardian of the person of the child;

(c) the guardian ad litem and/or guardian of the person of any other Party;

(d) the Person having legal custody of the child; and

(e) any individual standing in loco parentis to the child.

2. Where the child's parent is a minor, notice shall also be given to the minor's parents or guardian of the person unless the Court is satisfied, in its discretion, that such notice is not in the best interest of the minor and that it would serve no useful purpose.

3. The Petitioner shall provide notice to the Respondent(s)/parent(s) by personal service. Where it shall appear impractical to personally serve the Respondent/parent, however, the Court shall, upon Motion of the Petitioner, order service, either by certified mail, return receipt requested (restricted delivery to addressee only), to the Respondent's/parent's last known address, or by publication once a week for two (2) successive weeks in a newspaper of general circulation in the area where that Person was last domiciled, or both.

4. The Petitioner shall include with a Motion for notice by publication an affidavit describing the Petitioner's efforts to locate and serve the absent parent.

5. All other Parties shall be given notice by regular mail at their last known address.

6. Pursuant to RSA 170-C:13, costs of giving notice and advertising shall be paid by the Petitioner.

E. Initial Hearing. Should the Respondent/parent enter an Appearance or appear personally, the hearing described in (C)(5) of this rule shall be considered an initial hearing. At this hearing, the Court shall:

1. Determine that the Court has jurisdiction.

2. Assure that all parents have been identified and located, and if there is a unnamed or absent parent, inquire about what efforts have been made to locate that Person.

3. Appoint counsel for the Respondent(s)/parent(s), if necessary.

4. Address the issue of notice, if necessary.

5. Order evaluations, if appropriate.

6. Establish the time and date for a structuring conference.

7. Address any other matters necessary to expedite the case and to make orders for that purpose.

F. Structuring Conference. When an initial hearing is held as a result of an Appearance by the Respondent/parent, a structuring conference shall be scheduled to be held within thirty (30) days after the initial hearing. At the structuring conference, the Court shall:

1. Resolve any outstanding discovery disputes.

2. Identify issues of law and fact for trial.

3. Assure that all relevant evaluations will be completed prior to the final hearing on the merits.

4. Resolve any other matters which will simplify or aid the conduct of the final hearing on the merits.

5. Determine if a pretrial conference will be necessary and if so, set the time and date.

6. Set the time and date of the final hearing on the merits and estimate its length.

G. Pretrial Conference. A pretrial conference is not mandatory. However, if a pretrial conference is held, it shall be held at a time, within the discretion of the Court, after the structuring conference and before the final hearing on the merits. At the pretrial conference, the Court shall:

1. Resolve any remaining issues which would simplify or aid the conduct of the final hearing on the merits, e.g. memoranda of law, admission of documents, admission of reports, etc.

2. Review the final witness list.

3. Confirm the date, time, and estimated length of the final hearing on the merits.

H. Final Hearing On the Merits. If the Respondent/parent neither enters an Appearance nor appears personally, the final hearing on the merits shall be conducted in place of the scheduled initial hearing. If the Respondent/parent enters an Appearance, the final hearing on the merits shall be commenced within one hundred twenty (120) days after the structuring conference. The Court shall set aside sufficient time to avoid interruptions of the final hearing on the merits. In the event a final hearing on the merits cannot be completed within the allotted time, it may be adjourned. Except for good cause shown, the adjournment shall not exceed fourteen (14) days.

I. Issuance of Court Order. The Court shall issue a decision which shall include a disposition no later than thirty (30) days after the date of the final hearing on the merits, or when applicable, the filing of an Affidavit as to Military Service.

Upon the granting or denial of a Petition for termination of parental rights brought by the Division of Children, Youth and Families subsequent to a district court proceeding, the Court shall send notice of the decision to the district court.

Upon the granting or denial of a Petition for termination of parental rights brought by the Division of Children, Youth and Families, the Court shall send notice of the decision to the adoption unit. If the petition for termination is granted, the Court shall require the Division for Children, Youth and Families social worker to transfer the termination of parental rights case to the adoption unit within ten (10) days of the expiration of the appeal period and send a letter to the Court confirming such transfer. The Adoption Unit Social Worker shall file an Appearance for purposes of receiving notice for subsequent hearings.

If, after the final hearing on the merits, the Court does not order a termination of parental rights but finds that the best interest of the child requires substitution or supplementation of parental care and supervision, and orders a guardianship over the child by the Division for Children, Youth and Families or an authorized agency, a review hearing shall be scheduled to be held within one (1) year after any Court order granting guardianship is issued, and annually thereafter.

J. Post-Termination Case Review Hearings. The guardian ad litem for the child shall continue as such until the child is adopted or the Court discharges the guardian ad litem from further involvement in the case.

If the Court orders termination of parental rights and grants custody of the child to the Division for Children, Youth and Families for the purpose of placing the child for adoption, a post-termination case review hearing shall be scheduled to be held within ninety (90) days of the Court's order, and every six (6) months thereafter, unless excused by the Court for good cause shown. If an adoption petition is filed prior to any scheduled post-termination case review hearing, the hearing may be cancelled.

Within five (5) days prior to the post-termination case review hearing, the Division for Children, Youth and Families shall submit a written status report to the Court. The Division for Children, Youth and Families shall forward a copy of the status report to the child's guardian ad litem and/or attorney. The report shall be dated and signed and shall be written by the Division for Children, Youth and Families to include four (4) separate categories, as outlined below:

1. A description of the agency's progress toward arranging an adoptive placement for the child.

2. If adopted parents have not already been selected, a schedule and description of the steps taken to place the child for adoption.

3. A discussion of any special barriers preventing placement of the child for adoption and how they should be overcome.

4. The projected date for filing a Petition for adoption.

The Court shall make any orders which may be appropriate to achieve permanency

K. Change of Venue. When the Division for Children, Youth and Families wishes to proceed with adoption proceedings in a county or state other than where the termination occurred, the division may seek a change of venue pursuant to Rule 115.

Source

(a) Probate Rule 93

Rule 15. Wills

(a) **Filed Without Administration**

In the case of testacy, if there is no estate to be administered, a will may be filed and recorded without taking out administration, provided that a certified copy of a death certificate is filed with the Register. No other documents will be required when a will is filed without administration.

(b) **Proof of Codicil**

If the Court finds that a codicil is executed with the same formality as a will, and that the codicil specifically refers to the will, ratifying and confirming those provisions not amended by the codicil, the Court shall allow the will to be proved by proving the codicil.

(c) **Nuncupative or Lost**

In cases of nuncupative wills or lost wills, the Register shall follow the general procedures relating to the probate of estates.

(d) **With Charitable Trust, Charitable Remainder Trust or Charitable Request**

Whenever a will containing a charitable trust, charitable remainder trust, or charitable bequest is presented for probate, the Register shall send a copy of said will to the Director of Charitable Trusts within fourteen (14) days after the will is allowed.

(e) **Voluntary Administrations – Contribution of Non-Estate Funds**

Financial contributions, from either trust or personal funds which are not a part of the estate, may be made for the purpose of paying estate bills. Such contributions are not taken into account when determining the overall size of an estate relative to the jurisdictional limits found in RSA 553.

(f) **Status Reports – Estates Opened Solely to Pursue Cause of Action**

In estates opened solely to pursue a cause of action, a Fiduciary may file a motion to postpone the filing of annual accounts while the underlying legal action is pending. In lieu of an account, the Fiduciary shall file status reports as ordered by the Court. In no event, however, shall a Fiduciary be excused from filing an account for more than three (3) consecutive years.

Source

(a) Probate Rule 96
(b) Probate Rule 97
(c) Probate Rule 98
(d) Probate Rule 99
(e) Probate Rule 100
(f) Probate Rule 101

APPENDIX C

Amend the definition of "mandatory appeal" in Supreme Court Rule 3 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

"Mandatory appeal": A mandatory appeal shall be accepted by the supreme court for review on the merits. A mandatory appeal is an appeal filed by the State pursuant to RSA 606:10, or **[the first appeal filed by a party]** ~~an appeal~~ from a final decision on the merits **[in a case pending in]** ~~issued by~~ a superior court, district court, probate court, or family division court, that is in compliance with these rules. Provided, however, that the following appeals are NOT mandatory appeals:

(1) an appeal from a final decision on the merits issued in a post-conviction review proceeding (including petitions for writ of habeas corpus and motions for new trial);

(2) an appeal from a final decision on the merits issued in a collateral challenge to any conviction or sentence;

(3) an appeal from a final decision on the merits issued in a sentence modification or suspension proceeding;

(4) an appeal from a final decision on the merits issued in an imposition of sentence proceeding;

(5) an appeal from a final decision on the merits issued in a parole revocation proceeding;

(6) an appeal from a final decision on the merits issued in a probation revocation proceeding.;

(7) an appeal from a final decision on the merits issued in a landlord/tenant action filed under RSA chapter 540 or in a possessory action filed under RSA chapter 540; and

(8) an appeal from an order denying a motion to intervene.

Comment**s**

[Only the first appeal filed by a party from a final order in a case is a mandatory appeal. Should a subsequent appeal be filed by the same party from a subsequent final order in the same case, it will be a discretionary appeal, not a mandatory appeal. For example, if a party's first appeal in a divorce proceeding is from the final divorce decree, that appeal will be a mandatory appeal. If, at a later date, the same party appeals a subsequent final order issued in a post-divorce proceeding, such as a petition to modify the divorce decree or a petition to modify child support, that appeal will be a discretionary appeal.]

A trial court order denying a motion by a non-party to intervene in a trial court proceeding is treated as a "final decision on the merits" for purposes of appeal. Thus, such an order is immediately appealable to the supreme court. Pursuant to this rule, however, such an appeal is not a mandatory appeal. Therefore, a non-party who wishes to appeal the trial court's denial of the non-party's motion to intervene must file an appeal pursuant to Rule 7(1)(B) within the time allowed for appeal under that rule.

APPENDIX D

Adopt Supreme Court Rule 37(1)(e) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(e) *Professional Continuity Committee and New Hampshire Lawyers Assistance Program Exemption*: For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association during the course of their work on behalf of the professional continuity committee or the New Hampshire Lawyers Assistance Program which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

APPENDIX E

Adopt Supreme Court Rule 37(2)(c), 37(2)(f) and 37(2)(k) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

[Rule 37(2)(c)]

(c) *Complaint*: "Complaint" means a grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in Supreme Court Rule 37A, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

[Rule 37(2)(f)]

(f) *Grievance*: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office or the complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

[Rule 37(2)(k)]

(k) *Warning*: "Warning" means non-disciplinary action taken by the general counsel, the complaint screening committee or the professional conduct committee when it is determined that an attorney acted in a manner which involved behavior

requiring attention although not constituting clear violations of the rules of professional conduct warranting disciplinary action.

APPENDIX F

Adopt Supreme Court Rule 37(5)(b) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(b) The complaint screening committee shall have the power and duty:

(1) To consider and act on requests for reconsideration filed by grievants following a decision by general counsel not to docket a matter, to divert attorneys out of the system, or to dismiss a complaint after investigation.

(2) To consider and act on reports by staff members of the attorney discipline office with respect to docketed complaints.

(3) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(4) To dismiss complaints with a finding of no professional misconduct, with or without a warning.

(5) To dismiss complaints for any other reason, with or without a warning. If the committee determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(6) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the complaint screening committee determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(7) To refer complaints to disciplinary counsel for the scheduling of a hearing only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

(8) To consider and act upon requests for reconsideration of its own decisions, subject to the further right of disciplinary counsel or respondents to request that the professional conduct committee review a decision to refer a complaint to disciplinary counsel for the scheduling of a hearing.

APPENDIX G

Adopt Supreme Court Rule 37(6)(c) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(c) General counsel shall perform a variety of legal services and functions and shall have the power and duty:

(1) To receive, evaluate, docket and investigate professional conduct complaints.

(2) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(3) To dismiss complaints with a finding of no professional misconduct, with or without a warning.

(4) To dismiss complaints for other good cause, with or without a warning. If the general counsel determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(5) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the general counsel determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(6) To present complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason (with or without a warning) or referral to disciplinary counsel for a hearing.

(7) To assist disciplinary counsel in performing the duties of disciplinary counsel as needed.

(8) To perform legal services as required for the committees of the attorney discipline system.

(9) To oversee and/or perform administrative functions for the attorney discipline system including but not limited to maintaining permanent records of the operation of the system, preparation of the annual budget, and preparation of an

annual report summarizing the activities of the attorney discipline system during the preceding year.

APPENDIX H

Adopt Supreme Court Rule 37(20)(b)(1), 37(20)(j), 37(20)(k), and 37(20)(*l*) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

[Rule 37(20)(b)(1)]

(b) *Grievance Docketed as Complaint*: All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) in accordance with Supreme Court Rule 37A upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

[Rule 37(20)(j), 37(20)(k), and 37(20)(*l*)]

(j) *Disclosure to Lawyers Assistance Program*: The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(k) *Duty of Participants*: All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

(*l*) *Violation of Duty of Confidentiality*: Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may

consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

APPENDIX I

Adopt Supreme Court Rule 37A(I)(c) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(c) *Definitions*: Subject to additional definitions contained in subsequent provisions of this rule which are applicable to specific questions, or other provisions of this rule, the following words and phrases, when used in this rule, shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

Answer: The response filed by, or on behalf of, the respondent to a complaint or a notice of charges.

Attorney: Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

Complaint: A grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B) of this rule, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office general counsel or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

Court: The New Hampshire Supreme Court.

Disbarment: The termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to the court, after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

Disciplinary Counsel: The attorney responsible for the prosecution of disciplinary proceedings before any hearings committee panel, the professional conduct committee and the supreme court. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

Disciplinary Rule: Any provision of the rules of the court governing the conduct of attorneys or any rule of professional conduct.

Discipline: Any disciplinary action authorized by Rule 37(3)(c), in those cases in which misconduct in violation of a disciplinary rule is found warranting disciplinary action.

Diversion: Either a condition attached to discipline imposed by the professional conduct committee; or a referral, voluntary in nature, when conduct does not violate the rules of professional conduct; or non-disciplinary treatment by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee as an alternative to discipline for minor misconduct.

Formal Proceedings: Proceedings subject to section (III) of this rule.

General Counsel: The attorney responsible for (a) receiving, evaluating, docketing and investigating grievances filed with the attorney discipline office; (b)[dismissing or diverting complaints on the grounds set forth in Rule 37(6)(c) or presenting complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason with or without a warning or referral to disciplinary counsel for a hearing; (c) assisting disciplinary counsel in the performance of the duties of disciplinary counsel as needed; (d) performing general legal services as required for the committees of the attorney discipline system; and (e) overseeing and performing administrative functions for the attorney discipline system. General counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, and such part-time attorney or attorneys as may from time to time be deemed necessary.

Grievance: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however,

that if the attorney discipline office general counsel or complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

Hearing Panel: A hearing panel comprised of members of the hearings committee.

Inquiry: A preliminary investigation of a matter begun by the attorney discipline office on its own initiative to determine whether a complaint should be docketed.

Investigation: Fact gathering by the attorney discipline office with respect to alleged misconduct.

Minor Misconduct: Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not part of a pattern of similar misconduct.

Notice of Charges: A formal pleading served under section (III)(b)(2) of this rule by disciplinary counsel.

Public Censure: The publication by the court or the professional conduct committee, in appropriate New Hampshire publications, including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the *New Hampshire Bar News*, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in this section.

Referral: A grievance received by the attorney discipline office from any New Hampshire state court judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

Reprimand: Discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee in those cases in which misconduct in violation of the rules of professional conduct is found.

A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

Suspension: The suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section (II)(d)(2) regarding reinstatement.

Warning: Non-disciplinary action taken by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee when it is believed that an attorney acted in a manner which involved behavior requiring attention although not constituting clear violations of the rules of professional conduct warranting disciplinary action.

APPENDIX J

Adopt Supreme Court Rule 37A(I)(e)(2) and 37A(I)(e)(3) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(2) The attorney discipline office general counsel, thecomplaint screening committee or the professional conduct committee may issue a warning to an attorney when it is deemed to be appropriate. The issuance of a warning does not constitute discipline.

(3) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may divert a matter involving minor discipline, in lieu of discipline, subject to compliance with the terms of a written agreement. The professional conduct committee may require an attorney to participate in a diversion program as a condition of discipline. Any component of the attorney discipline system may refer to a diversion program, on a voluntary basis, an attorney who engages in conduct that does not violate the rules of professional conduct but which should be addressed as a corrective matter.

APPENDIX K

Adopt Supreme Court Rule 37A(I)(g)(3) to 37A(I)(g)(8) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

(3) Discretionary diversion as an alternative to a formal sanction for minor misconduct may occur if:

(A) The misconduct appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be the result of poor office management, chemical dependency, behavioral or health-related conditions, negligence or lack of training or education; and

(B) There appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that which gave rise to the diversion.

(C) If the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee offers a written diversion agreement to an attorney, the attorney shall have thirty (30) days to accept and execute the diversion agreement.

(D) An attorney may decline to accept and execute a diversion agreement in which case the pending complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(4) Diversion agreements shall be in writing and shall require the attorney to participate, at his or her own expense, in a remedial program acceptable to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee which will address the apparent cause of the misconduct. Remedial programs may include but are not limited to: law office assistance; chemical dependency treatment; counseling; voluntary limitation of areas of practice for the period of the diversion agreement; or a prescribed course of legal education including attendance at legal education seminars. A diversion agreement shall require the attorney to admit the facts of the complaint being diverted and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the facts shall be deemed true in any subsequent disciplinary proceedings.

(5) The fact that a diversion has occurred shall be public in all matters. Written diversion agreements shall also be public unless the attorney discipline office general counsel, the complaint screening committee or the professional conduct

committee votes to make it non-public based on one or more of the following: health, personal finances, family considerations or other highly personal matters.

(6) If an attorney fails to comply with the terms of a written diversion agreement, the agreement shall be terminated and the complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(7) If an attorney fulfills the terms of a written diversion agreement, the complaint shall be dismissed and written notice shall be sent to both the attorney and the complainant.

(8) The attorney discipline office shall a) prepare diversion agreements setting forth the terms determined by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee; b) monitor the progress of the attorney participating in the diversion program to insure compliance; and c) notify the complaint screening committee or the professional conduct committee whenever there is a voluntary or involuntary termination of the written diversion agreement or upon successful completion of the diversion program.

APPENDIX L

Adopt Supreme Court Rule 37A(II)(a)(6) and 37A(II)(a)(7) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

(6) *Investigation.*

Either prior to or following receipt of the respondent's answer, general counsel and his or her deputies and assistants shall conduct such investigation as may be appropriate.

Upon completion of the investigation, general counsel may (1) dismiss or divert a complaint on the grounds set forth in Rule 37(6)(c); or (2) present the complaints to the complaint screening committee with recommendations for diversion as provided in section (I)(g), dismissal for any reason (with or without a warning) or referral to disciplinary counsel for a hearing.

At any time while general counsel is investigating a docketed complaint, the respondent may notify general counsel that the respondent waives the right to have the matter considered by the complaint screening committee and consents to the matter being referred to disciplinary counsel for a hearing. Agreement by the respondent to referral for a hearing shall not be considered an admission of misconduct or a waiver of any defenses to the complaint.

Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, disciplinary counsel or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the complaint screening committee shall be public.

(7) *Action By the Attorney Discipline Office General Counsel or the Complaint Screening Committee.*

(A) *Diversion.* In any matter in which the[attorney discipline office general counsel or the complaint screening committee determines that diversion is appropriate, it shall be structured consistent with the provisions of section (I)(g).

(B) *Dismissal For Any Reason.* In any matter in which the Attorney Discipline Office General Counsel or the complaint screening committee determines that a complaint should be dismissed, either on grounds of no professional misconduct or any other reason, general counsel or the committee shall dismiss the complaint and it shall notify the complainant and the respondent in writing and the attorney discipline office shall close its file on the matter.

(C) *Dismissal With A Warning.* If the Attorney Discipline Office General Counsel or the complaint screening committee determines that the complaint should be dismissed and that a warning should issue, ~~it~~ general counsel or the committee shall notify the complainant and the respondent of such disposition in writing and shall notify the respondent of his or her rights, if any, pursuant to section (II)(b)(1)(B) of this rule.

(D) *Formal Proceedings.* If the respondent agrees with the recommendation of the Attorney Discipline Office General Counsel to refer a complaint to disciplinary counsel, or the complaint screening committee determines that formal proceedings should be held, the complaint shall be referred to disciplinary counsel for the issuance of notice of charges and the scheduling of a hearing on the merits before a panel of the hearings committee.

APPENDIX M

Adopt Supreme Court Rule 37A(II)(b)(1)(B)(iii) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(iii) the fact that the record of such warning may be considered (a) by the Attorney Discipline Office General Counsel or the complaint screening committee to determine whether diversion may be appropriate in the event charges of minor misconduct are subsequently brought against the respondent; or (b) by the professional conduct committee in the event findings of misconduct are subsequently found against the respondent.

APPENDIX N

Adopt Supreme Court Rule 37A(III)(b)(1) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(1) *General.*

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

APPENDIX O

Adopt Supreme Court Rule 37A(VI) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(VI) ***Request for Reconsideration***

(a) *Request.* A request for reconsideration shall be filed with the committee that issued the decision within ten (10) days of the date on that committee chair's written confirmation of any decision of the committee; provided, however, that a request for reconsideration of a decision of the attorney discipline office general counsel shall be filed with the complaint screening committee within ten (10) days of the date on the decision. The request shall state, with particular clarity, points of law or fact that have been overlooked or misapprehended and shall contain such argument in support of the request as the party making such request desires to present.

(b) *Answer.* No answer to a request for reconsideration shall be required unless specifically ordered by the committee considering the matter, but any answer or response must be filed within ten (10) days of the date on the notification of the request.

(c) *Committee Action.* If a request for reconsideration is granted, the committee considering the request, may reverse the decision or take other appropriate action, with or without a hearing.

(d) *Effect of Request.* The filing of an initial request for reconsideration of a sanction issued by the professional conduct committee shall stay the thirty (30) day period for filing an appeal pursuant to Supreme Court Rule 37(3)(c).

APPENDIX P

Adopt Superior Court Rule 61-B on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

UNTIMELY-FILED GUARDIAN AD LITEM REPORTS

61-B. (I) A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than $100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

(II) The court clerk shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The court clerk shall make such report available to the public.

APPENDIX Q

Adopt Superior Court Rule 169-A on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

ACCESS TO CONFIDENTIAL RECORDS – FEES AND NOTICE

169-A. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to: (1) a financial affidavit filed pursuant to Superior Court Rule 197 or 198 and kept confidential under RSA 458:15-b, I; or (2) any other sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

APPENDIX R

Amend Superior Court Rule 170 by deleting it in its entirety and replacing it with the following:

170. **MEDIATION**

(A) Applicability.

(1) All parties to any civil or equity action filed in or removed to the Superior Court, except actions exempt pursuant to subsection B below, shall, within 180 days of the return date, absent an agreement approved by the court, attend and participate in an alternative dispute resolution conference pursuant to this rule.

(B) Exemptions.

(1) The following categories of civil and equity actions are exempt from the requirements of this rule.

(a) Actions by or against or appeals taken from decisions of the state, counties, or municipalities (including their subdivisions, departments, agencies, boards, and agents), except where the action contains a claim for personal injury or monetary damages, unless the parties agree to alternative dispute resolution and the court approves.

(b) Actions where the parties represent by joint motion that they have engaged in formal alternative dispute resolution before a neutral third party prior to suit being filed.

(c) Actions exempted by the court on motion and for good cause, but only when said motion is filed within 180 days of the return date.

(C) Selection of Process and Neutral.

(1) Promptly after the filing of an answer or appearance in the Superior Court or upon removal from the District Court, the parties shall confer and select an alternative dispute resolution process (that is, mediation, neutral evaluation, or arbitration) and a neutral third party to conduct the process. If the parties cannot agree on the ADR process, they shall proceed to mediation.

(2) The parties shall select a neutral third party to conduct the dispute resolution process from the appropriate Court list of qualified neutrals. If the

parties cannot agree on the selection of a neutral, they shall notify the court, which shall designate a neutral from the Court's list of qualified neutrals.

(3) Parties may select a neutral not on the Court's list of qualified neutrals if the parties agree, document proof of the qualifications of the chosen neutral, and the court approves. Any motion seeking leave to hire a mediator not on the Court's list of qualified mediators must be filed within 90 days of the return date.

(D) ADR Fees.

(1) Neutrals shall be compensated, and shall provide to the parties a schedule of their fees and expenses.

Unless the court orders or the parties otherwise agree, the neutral's fees and expenses shall be apportioned and paid in equal shares by each party, due and payable according to fee arrangements worked out directly by the parties and the neutral. Fees and expenses paid to the neutral shall be allowed and taxed as costs in accordance with Superior Court Rule 87(a).

(2) Indigency.

A party may move to be exempted from payment of neutral fees or a portion thereof based upon indigency. Determination of indigency shall be in the sole discretion of the court. If the court determines a party is indigent, that party's case shall be mediated/arbitrated, at the court in which the case has been filed, and under time and procedure parameters set by the court, by a neutral from the court's list of qualified neutrals available pro bono.

(E) Motions and Discovery.

Unless otherwise ordered by the Court, the alternative dispute resolution process shall not suspend or delay other pretrial activity, including discovery and motion practice.

(F) Conference Scheduling and Report.

(1) Conference. Once the neutral is selected or designated, the parties shall agree with the neutral on a time and place for the ADR conference. The conference must be held and completed no later than 180 days after the return date absent an agreement approved by the court.

(2) Settlement. If the conference results in a settlement, the parties shall, within 10 days after the conference, report that fact to the court and include a proposed order concerning the settlement. The court shall make the appropriate entry on the docket.

(3) No or Incomplete Settlement. If the conference does not result in a settlement, the neutral shall, within 10 days after the conference, file with the court a report and, if appropriate, a proposed order which indicates any agreements of the parties on matters such as stipulations, identification and limitation of issues to be tried, discovery matters and further alternative dispute resolution efforts. If there are no agreements of the parties, the report shall so indicate. The parties shall be equally responsible for assuring that the neutral's report is filed in a timely manner. If the neutral does not file the report, the parties shall prepare and file the report.

(G) Conference Attendees.

(1) Unless excused by the neutral, conference attendees shall include:

(a) Individual parties;

(b) A management employee or officer of a corporate party, with appropriate settlement authority, whose interests are not entirely represented by an insurance company;

(c) A designate representative of a government agency party whose interests are not entirely represented by an insurance company;

(d) An adjuster for any insurance company providing coverage potentially applicable to the case;

(e) Counsel for all parties; and

(f) Nonparties whose participation is essential to settlement discussions - including lien holders - may be requested to attend the conference.

(2) The court may impose appropriate sanctions on any party or representative required and notified to appear at a conference who fails to attend.

(3) Attendance shall be in person, or at the discretion of the neutral, by telephone or videoconference.

(H) Conference Documents.

(1) Not later than ten (10) days prior to the session the parties shall submit to the neutral and exchange a summary, which shall not be more than 5 pages, of the significant aspects of their case. The parties may also attach to the summary copies of pertinent documents.

(2) Upon receipt of a party's submission, any party may send additional information responding to that submission. All such responsive submissions shall be exchanged with opposing counsel and shall contain a statement of compliance with the exchange requirement.

(I) Inadmissibility of Alternative Dispute Resolution Proceedings.

(1) ADR proceedings and information relating to those proceedings shall be confidential. Information, evidence, or the admission of any party or the valuation placed on the case by any neutral shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. All non-binding ADR proceedings are deemed settlement conferences consistent with the Superior Court Rules and Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding, the fact that there was an ADR proceeding or any other matter concerning the conduct of the ADR proceedings except as required by the Rules of Professional Conduct or the Mediator Standards of Conduct.

(2) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in an ADR proceeding.

(J) Sanctions.

If a party or a party's lawyer fails without good cause to appear at a dispute resolution conference scheduled pursuant to this rule, or fails to comply with any order made there under, the court may, on its own or upon motion of a party, impose any sanction that is just and appropriate in the circumstances.

(K) Qualifications.

In determining whether a particular individual is included in the panel, the Office of Mediation/Arbitration shall consider mediation proficiency as well as the mediator's suitability for the program:

(1) Mediation Proficiency.

(a) Mediation training. The neutral must be able to document the successful completion of at least 40 hours of mediation training. All current Rule 170 Mediators, as of the effective date of this rule, who lack the 40 hours of training required by this section, may apply for inclusion on the court roster. They shall be given 12 months to comply with the educational requirements of this rule. In addition, the mediator must have completed a 4-hour course on New Hampshire’s judicial system approved by Office of Mediation/Arbitration or be a member of the New Hampshire Bar.

(b) ADR experience. The mediator must be able to document a minimum of 50 hours of mediation or active co-mediation over at least ten cases within the last five years. Observation of mediation sessions does not constitute mediation experience and will not count toward these hours.

(c) Provide to the Office of Mediation/Arbitration three letters of reference, including at least one letter from a person with knowledge of the applicant's mediation experience as set forth in I (1) and (2).

(d) Continuing education. The neutral must complete eight hours of continuing mediation training annually for the duration of the period of inclusion on the panel.

(2) Suitability for Panel.

(a) Good standing. Any neutral who is a member of the New Hampshire Bar must be a member in good standing.

(b) Moral character. Neutrals must be of good moral character and adhere to any standards of practice for mediators acting pursuant to these Rules adopted by the Supreme Court.

(c) Disclosures. Applicants must also disclose criminal convictions or professional disciplinary actions. The Office of Mediation/Arbitration may refuse to approve an applicant who has been convicted of a criminal offense or been disciplined by a professional organization on ethical grounds. Failure to disclose complete and accurate information could constitute grounds for de-certification once the errors or omissions are discovered.

(3) Mediators shall apply for inclusion on the courts roster by submitting an application, application fee, and three letters of reference as set forth in this rule to the Office of Mediation/Arbitration. Inclusion on the court’s list of qualified neutrals remains valid until July 1 of each year. To request continued inclusion, a neutral, prior to June 1 of each year, shall:

(a) File a statement that there have been no material changes in his or her initial application for inclusion, or if there have been material changes, list and explain them.

(b) File documentation that the neutral has completed 8 hours of continuing education in the field of alternative dispute resolution in accordance with section (K)(1)(d).

(c) Accompanied by payment of the annual fee set for inclusion on the court’s list of qualified neutrals.

(4) All neutrals agree that as a condition of inclusion on the Court's list of qualified neutrals, they will provide up to two Pro Bono ADR sessions each year to parties who qualify as indigent.

(L) Guidelines for the Conduct of Rule 170 Mediations

The Guidelines for Rule 170 mediators have three major purposes: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The guidelines draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice.

Mediation is a process in which an impartial third party -- a mediator -- facilitates the resolution of a dispute by promoting voluntary agreement (or "self-determination") by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. These guidelines give meaning to this definition of mediation.

(1) Self-Determination: A Mediator shall recognize that mediation is based on the principle of self-determination by the parties.

(a) Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The mediator shall assist the parties in reaching an informed and voluntary settlement.

(b) A mediator shall not coerce or unfairly influence a party to enter into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(c) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(d) The mediator shall promote mutual respect among the parties throughout the mediation process.

COMMENTS

a. The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

b. A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the

importance of consulting other professionals, where appropriate, to help them make informed decisions.

(2) Impartiality: A mediator shall conduct the mediation in an impartial manner.

Mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

COMMENTS

a. A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.

b. A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

(3) Conflicts of Interest: A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after them mediation.

A conflict of interest is anything that might create an impression of bias. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of potential conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest issue casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of a conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with a party to the mediation in the same or related matter, particularly a matter affecting the interest of any other party to the mediation.

COMMENTS

a. A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations, which maintain rosters of qualified professionals.

b. Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressures from outside the mediation process should never influence the mediator to pressure parties to settle.

(4) Confidentiality: A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

(a) A mediator shall preserve and maintain the confidentiality of all mediation proceedings except where disclosure is required by law. Any communication made during the mediation, which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation, is confidential.

(b) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.

(c) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except:

(i) Where the parties to the mediation agree in writing to waive confidentially;

(ii) Where there are threat(s) of violence or harm to self or others;

(iii) Where disclosure is required by law or the Code of Professional Responsibility.

(5) Professional Advice: A mediator shall not provide information the mediator is not qualified by training or experience to provide and shall not give legal advice. When a mediator believes a non-represented party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.

While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case is filed will resolve the dispute.

A lawyer-mediator shall conduct the mediation in a manner that is consistent with the parties' choices and expectations. If agreed by the parties, a lawyer-mediator may offer evaluation of strengths and weaknesses of positions, assess the value and cost of alternatives to settlement or assess the barriers to

settlement provided such evaluation is incidental to the facilitative role and does not interfere with the lawyer-mediator's impartiality or self-determination of the parties.

COMMENTS

a. A lawyer-mediator shall not offer any of the parties legal advice that is the function of the lawyer who is representing a client.

b. If the parties request an evaluative approach, the lawyer-mediator shall discuss the risk that the evaluation might interfere with mediator impartiality and party self-determination.

(6) Competence.

(a) A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

(b) If a mediator cannot satisfy this Standard, the mediator shall immediately notify the parties and take steps reasonably appropriate under the circumstances, including declining or withdrawing from the engagement or, where appropriate, obtaining assistance from others.

(c) A mediator shall not conduct any aspect of a mediation while impaired by drugs, alcohol, medication or otherwise.

COMMENTS

a. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings, and other qualities are often necessary for effective mediation. A person who offers her or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively.

b. A mediator should have available for the parties information relevant to training, education and experience.

c. A mediator should attend educational programs and related activities to enhance and strengthen her or his personal knowledge of and skills in the mediation process.

(7) Quality of the Process: A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

COMMENTS

a. The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should therefore refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other professions.

b. A mediator shall withdraw from mediation when incapable of serving or when unable to remain impartial.

c. A mediator shall withdraw from the mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

d. Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

(8) Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.

COMMENTS

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

(9) Fees and Expenses

(a) A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.

(b) A mediator shall be guided by the following general principles in determining fees:

(i) Any charges for mediation services based on time shall not exceed actual time spent or allocated.

(ii) Charges for costs shall be for those actually incurred.

(iii) All fees and costs shall be appropriately divided between the parties.

(iv) When time or expenses involve two or more mediations on the same day or trip, the time and expense charges shall be prorated appropriately.

(c) A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:

(i) the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;

(ii) the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;

(iii) the basis and amount of charges for any other items; and

(iv) the parties' pro rata share of mediation fees and costs if previously determined by the court or agreed to.

(10) Advertising and Solicitation. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating one's qualifications, experience, and range of available professional services.

COMMENTS

a. Communications, including business cards, letter heads, or computer-based communications, should not include any statistical settlement data or any promises as to outcome.

b. Communications may include references to a mediator's satisfying state, national or private organization qualifications only if the entity referred to has a procedure for qualifying mediators, and the mediator has been duly granted the requisite status.

c. A mediator should not solicit in a manner that could give an appearance of partiality for or against a party.

d. A mediator should not list names of clients or persons served in promotional materials and communications without their permission.

(M) Complaints.

Complaints against neutrals shall be made to the Director of the Office of Dispute Resolution.

APPENDIX S

Amend Superior Court Rule 170-A by deleting it in its entirety and replacing it with the following:

170-A. **ARBITRATION**

(A) Cases for Arbitration. Subject to NH RSA 542, all non-criminal and non-marital disputes will be assigned to arbitration upon agreement of the parties or as mandated by a written contractual provision.

(B) Submission of Dispute to Arbitration:

A written request for arbitration shall be made to the Administrator of the Office of Mediation/Arbitration. The request may come prior to or after the commencement of any lawsuit. In the event that the dispute is pending in a New Hampshire Court, a copy of the written submission shall be sent to the clerk for the appropriate court; and all proceedings in that court will cease. The administration of the Arbitration Hearing will be conducted pursuant to New Hampshire Superior Court Rule 170-A.

(C) Administrative Fees:

A non-refundable fee of _____ per party must be submitted to the Administrator of the Office of Mediation/Arbitration at the time of the written submission of the dispute.

(D) Roster of Arbitrators:

The New Hampshire Supreme Court shall establish minimum standards and procedures for qualifications, certifications, professional conduct discipline and training for arbitrators who will be on the panel. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process and the Office of Mediation/Arbitration. The Office of Mediation/Arbitration shall maintain a roster of qualified arbitrators accepted by the New Hampshire Supreme Court.

(E) Immunity for Arbitrators:

An arbitrator selected to serve and serving under New Hampshire Superior Court Rule 170-A shall have immunity consistent with RSA (Statute Creating the Office).

(F) Neutrality:

All arbitrators, whether selected by a party, selected by all parties, or selected by arbitrators, shall be neutral and shall serve with impartiality.

(G) Communication with Arbitrator:

No party and no one acting on behalf of any party shall communicate ex-parte with an arbitrator or a candidate for arbitrator concerning the arbitration.

(H) Arbitrator's Disclosure:

Any person appointed as an arbitrator shall disclose immediately to the parties and the Administrator of the Office of Mediation/Arbitration any circumstance likely to give rise to justifiable concern relative to the arbitrator's impartiality or independence, including any personal relationship, financial interest, or bias relative to the parties, the nature of the dispute, or counsel.

(I) Arbitration Panel.

Each panelist shall be subject to the Code of Ethics adopted by the New Hampshire Supreme Court.

In all cases so assigned the Office of Mediation/Arbitration shall provide the litigants with the names of qualified individuals to serve as arbitrators on either a single or three-member panel. The litigants may choose either a single or three-person panel. In the event the litigants cannot agree upon the panel number, a three-person panel will be utilized for all cases involving claims or counterclaims exceeding $100,000 or cases involving three or more litigants. In the event the litigants cannot agree upon the panel number, a single member panel will be utilized for all cases involving claims or counterclaims of $100,000 or less.

The litigants shall attempt to select the arbitrators by agreement. In the event the litigants cannot agree on an arbitrator for single-person panels, each litigant shall submit one name to the Office of Mediation/Arbitration and the Administrator shall select one individual from the names submitted to serve as the arbitrator.

For three-person panels, if the litigants cannot unanimously agree upon the arbitrators and there are two litigants, each will select an arbitrator and the two arbitrators will select the third. In the event there are three litigants, each will select an arbitrator. The three selected arbitrators will serve as the panel. In the event there are more than three litigants and they cannot unanimously agree upon the panel, each litigant will submit one name to the Office of Mediation/Arbitration and the Administrator shall select three individuals from the names submitted to serve as the arbitration panel.

(J) Qualifications of Arbitrators

(1) The Office of Mediation/Arbitration shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice in the State of New Hampshire and, in its discretion, qualified non-attorneys with extensive experience in their field.

(2) Attorneys serving as arbitrators shall have substantial experience in civil litigation, and shall have been licensed to practice law in the State of New Hampshire for a minimum of ten (10) years, or can provide the Office of Mediation/Arbitration with proof of equivalent qualifying experience.

(3) Non-attorneys serving as arbitrators shall have as a minimum 10 years of experience in their field of expertise, or can provide the Office of Mediation/Arbitration with proof of equivalent experience.

(4) Arbitrators shall be required to complete an orientation/training program following their selection to the panel and other additional training sessions scheduled by the Office of Mediation/Arbitration or demonstrate completion of other appropriate training or education programs as approved by the Director of the Office of Mediation/Arbitration.

(5) Arbitrators shall be sworn or affirmed by the Chief Justice or his designee to uphold these rules of the Program, the laws of the State of New Hampshire and the Code of Ethics adopted by the Supreme Court.

(K) Arbitrator Fees

Neutrals shall be compensated, and shall provide to the parties a schedule of their fees and expenses. In the event a single arbitrator is selected, the parties shall equally share the costs of the panel. When there are two parties and they select a three person panel each party shall pay for the arbitrator selected by the party and share the fees of the third panel member. When there are three parties and they select a three person panel, each party shall be responsible for the arbitrator selected by the party. In the event there are more than three parties, the parties shall pay a pro rata share of the entire arbitration panels fees.

(L) Preliminary Hearing.

(1) At the request of any litigant, the panel will schedule within 14 days of the request a preliminary hearing with counsel and/or the litigants. The preliminary hearing may be conducted by telephone at the panel's discretion.

(2) During the preliminary hearing, the litigants and the panel shall discuss and establish a schedule for the hearings, any outstanding discovery

issues, any outstanding procedural issues, and to the extent possible a clarification of the issues.

(3) Ex parte communications between a litigant's counsel and arbitrator are prohibited.

(M) Hearings: When and Where Held; Notice.

(1) Hearings shall be held at a place designated by the panel. The hearing date shall be established at the preliminary hearing or by the panel after consultation with counsel and/or the litigants. Counsel and/or the litigants shall respond to requests for hearing dates within seven (7) days of the request. Counsel or the litigants shall be notified in writing at least thirty (30) days before the hearing of the time and place of the hearing. No hearing shall be assigned for Saturdays, Sundays, legal holidays, or evenings unless by the unanimous agreement of all counsel or litigants.

(2) Unless excused by the panel, all litigants shall be in attendance at the hearing, and each litigant shall have at least one person present who has authority to authorize settlement.

(N) Postponement of Arbitration.

In the event that counsel or any litigant for good cause shown is unable to proceed, the panel may reschedule the case in their discretion. The postponement shall be for no more than 30 days absent extraordinary circumstances.

(O) Default and Sanctions.

Upon failure of a litigant to appear at a scheduled arbitration hearing or to participate in good faith in the proceedings, a default judgment may be entered and reasonable costs and attorneys fees may be assessed against the litigant. Default judgments may be contested only by the filing of a Motion to Strike Default setting forth specific grounds therefor within ten (10) days of the mailing of the Notice of Default. The panel shall have discretion as to appropriate sanction, including assessing costs, attorneys' fees, or entering default.

(P) Prehearing Submissions.

(1) Unless otherwise agreed to at the preliminary hearing, the litigants shall exchange a list of witnesses they intend to call, including experts, a short description of the anticipated testimony of each witness, an estimate of the length of direct testimony of each witness, and all exhibits at least thirty (30) calendar days before the arbitration hearing. The litigants shall attempt to resolve any disputes regarding the admissibility of exhibits. The exhibits must be premarked

and a list of the exhibits submitted, indicating those exhibits that are to be admitted without objection and those exhibits that are objected to.

(2) If the litigants intend to offer expert witnesses at the time of the hearing, at least sixty (60) calendar days before the arbitration hearing an expert disclosure consistent with the then existing Superior Court Rule 35 shall be made. Failure to make such a disclosure will result in the exclusion of the expert as a witness at the hearing. Any objection to the sufficiency of the disclosure and, therefore, the admissibility of the expert's testimony will be ruled upon by the panel.

(Q) Case Summary.

(1) All litigants shall submit and exchange no later than ten (10) days prior to the arbitration hearing a double-spaced typewritten summary of not more four (4) pages upon 8½" x 11" paper of the significant portions of their case.

(2) All such summaries shall contain a written stipulation, or, if counsel cannot agree to file a stipulation, a separate statement by each litigant, setting forth the following information:

(i) All uncontested facts;

(ii) All contested facts;

(iii) Pertinent applicable law;

(iv) Disputed issues of law;

(v) Specific claims of liability by each litigant making such claims;

(vi) Specific defenses to liability by each litigant asserting such defenses;

(vii) An itemized statement of special damages by each litigant claiming such damages;

(3) All such summaries shall contain a statement of compliance with the exchange requirement.

(4) The purpose of the case summary submission is to apprise the panel of the issues in dispute.

(R) Securing Witnesses and Documents for the Arbitration Hearing.

(1) The panel may issue subpoenas for the attendance of witnesses or the production of documents. All litigants shall produce for the Arbitration Hearing all witnesses requested in writing by another litigant that are in their employ or under their control. This shall be done without the need of subpoena.

(2) The testimony of witnesses shall be given under oath.

(3) The plaintiff shall present all of his/her evidence. In the event of multiple plaintiffs, each plaintiff shall present all of his/her evidence. The defendant will then present evidence to support its defenses and any counterclaims. In the event of multiple defendants, one defendant will complete his evidence and then the remaining defendants will proceed.

(4) Witnesses will be subject to cross-examination by other counsel (or the opposing litigant where a party is unrepresented) and the panel. The panel has the discretion to vary this procedure provided the litigants are treated fairly, justly, and equally and that each litigant is given an adequate opportunity to present his case.

(5) The panel exercising its discretion shall conduct the proceedings with a view to expediting the hearing and expediting the resolution of the dispute. Therefore, strict conformity to New Hampshire Rules of Evidence is not required, with the exception that the panel shall apply applicable New Hampshire law relating to privileges and work product. The panel shall consider evidence that is relevant and material to the dispute, giving the evidence such weight as is appropriate. The panel may limit testimony to exclude evidence that would be unduly repetitive.

(6) Openings and closing will be allowed and may be made orally or in writing.

(S) Hearing Closure.

If post-hearing memoranda are to be submitted or closing arguments are to be made in writing, the hearing shall be deemed closed upon receipt by the panel of the written submissions. The date for the written submissions shall be established; otherwise, the hearing will be closed at the conclusion of the presentation of the evidence and oral arguments.

(T) Transcript of the Testimony.

Any litigant may arrange for a stenographic or other record to be made of the hearing and shall inform the other litigants in advance. The requesting litigant shall bear the cost of the stenographic record. A copy of the stenographic record shall be made available to all other litigants upon request.

(U) Report of Award.

(1) Within twenty (20) days after the hearing closure date, the panel shall file a Report of Award. Originals of the Award shall be mailed to all counsel or litigants. If there is a dissent, it shall be signed separately; but, the Award shall be binding if signed by the majority of a three-member panel.

(2) The decision need not be in a particular form but must include sufficient findings of fact and conclusions of law to establish a basis for the decision.

(V) Legal Effect of Report and Award; Entry of Judgment.

The Report of Award, unless appealed consistent with provisions of New Hampshire RSA 542:8, shall be final and shall have the attributes and legal effect of a verdict. If no appeal is taken within the time and in the manner specified in New Hampshire RSA 542:8, any litigant may move for confirmation and entry of judgment in accordance with New Hampshire RSA 542:8. After entry of such judgment, execution process may be issued as in the case of other judgments.

(W) Complaints.

Complaints against neutrals shall be made to the Director of the Office of Dispute Resolution.

APPENDIX T

Amend Superior Court Rule 185 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

185. ANSWER AND CROSS-PETITION. An answer to a petition or a cross-petition is required in cases where the responding party wishes to seek ~~alimony or other~~ affirmative relief **[other than alimony**], or to assert an affirmative defense. In all other cases, an answer may be filed. All answers shall be dated and signed under oath. A cross-petition must follow the format set forth in Rules 173 and 174. An answer to a petition, or a cross-petition, shall be filed within thirty days after the return day. Any answer to a cross-petition shall be filed within ten days after filing of the cross-petition. **[Any party who wishes to seek alimony may either file an answer as set forth in this rule, or file a motion in accordance with the requirements of RSA 458:19.]**

APPENDIX U

Adopt District Court Rule 1.25 on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

Rule 1.25. Untimely-filed guardian ad litem reports

(A) A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than $100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

(B) The court clerk shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The court clerk shall make such report available to the public.

APPENDIX V

Adopt District Court Rule 1.26 on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

Rule 1.26. Access To Confidential Records – Fees And Notice

Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

APPENDIX W

Adopt Probate Court Rule 61-B on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

Rule 61-B. **UNTIMELY-FILED GUARDIAN AD LITEM REPORTS**

(a) A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than $100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

(b) The register shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The register shall make such report available to the public.

APPENDIX X

Adopt Probate Court Rule 169-A on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

Rule 169-A. ACCESS TO CONFIDENTIAL RECORDS – *Fees and Notice*

Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the register.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

APPENDIX Y

Adopt Family Division (General) Rule 12 on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

12. **Untimely-filed Guardian Ad Litem Reports:**

A. A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than $100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

B. The court clerk shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The court clerk shall make such report available to the public.

APPENDIX Z

Adopt Family Division (General) Rule 13 on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

13. **Access To Confidential Records – Fees And Notice:** Any person or entity not otherwise entitled to access may file a motion or petition to gain access to: (1) a financial affidavit filed pursuant to Family Division (Domestic Relations) Rule 13 and kept confidential under RSA 458:15-b, I, or (2) any other sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

APPENDIX AA

Amend Rule of Evidence 609 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) *General rule.* For the purpose of attacking the ~~credibility~~ **[character for truthfulness]** of a witness,

[(1)] evidence that **[a witness other than an accused]** ~~the witness~~ has been convicted of a crime shall be admitted**[, subject to Rule 403,]** ~~if elicited from the witness or established by public record during cross-examination but only~~ if the crime ~~(1)~~ was punishable by death or imprisonment in excess of one year under the law under which ~~he or she~~ **[the witness]** was convicted, and **[evidence that an accused has been convicted of such a crime shall be admitted if]** the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the ~~defendant~~ **[accused; and]** ~~or~~

(2) ~~involved dishonesty or false statement, regardless of the punishment.~~ **[evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.]**

(b) *Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) *Effect of* **[*pardon,*]** *annulment, or certificate of rehabilitation.* Evidence of a conviction is not admissible under this rule if **[(1)]** the conviction has been the subject of **[a pardon,]** ~~an~~ annulment, certificate or rehabilitation, or other equivalent procedure **[based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime**

which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence].

(d) *Juvenile adjudications.* Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

APPENDIX BB

Amend Supreme Court Rule 33 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 33. Nonmember of the New Hampshire Bar.

(1) (a) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, shall not be allowed to enter an appearance in any case, except on application to appear *pro hac vice*, which may be granted if a member of the Bar of this State **[(the "In-State Attorney")]** is associated with him or her and present at oral argument.

(b) A~~n~~ **[Nonmember A]**~~a~~ttorney ~~who is not a member of the Bar of this State~~ seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for

disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application; ~~and~~

(8) the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at oral argument**[; and**

(9) the date upon which the non-refundable fee set forth in Rule 33(5) was paid to the New Hampshire Bar Association].

(c) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that ~~such admission~~:

(1) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(2) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

(2) Without the prior written approval of the court, no person who is not a lawyer may represent a person other than himself or be listed on the notice of appeal or other appeal document, or on the brief, or sit at counsel table in the courtroom or present oral argument. Request for such written approval shall be made in writing at the time of filing the appeal or, if it relates to briefing or oral argument, not later than 15 days before the date scheduled for filing the brief or for oral argument. The request must contain: (a) a power of attorney signed by the party, and witnessed and acknowledged before a justice of the peace or notary public, constituting another person as his or her attorney to appear in the particular action; and (b) an affidavit under oath in which said other person

discloses (i) all of said other person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (ii) all instances in which said other person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (iii) all prior proceedings in which said other person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(3) When an attorney provides limited representation to an otherwise unrepresented party by drafting a document to be filed by such party with the supreme court in a proceeding in which the attorney is not entering any appearance or otherwise appearing in the case in the supreme court, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement "This pleading was prepared with the assistance of a New Hampshire attorney." The unrepresented party must comply with this required disclosure.

[(4) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.

(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]

APPENDIX CC

Amend Superior Court Rule 19 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

19. (a) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(b) A~~n~~ **[Nonmember A]**attorney ~~who is not a member of the Bar of this State~~ seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a

copy of the written order or transcript of the oral rulings shall be attached to the application); ~~and~~

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application **[; and**

(8) the date upon which the non-refundable fee set forth in Rule 19(e) was paid to the New Hampshire Bar Association].

~~(8)~~ **[(9)]** In addition, unless this requirement is waived by the superior court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(c) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that ~~such admission~~:

(1) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(2) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

[(d) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.

(e) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such

application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]

APPENDIX DD

Amend District Court Rule 1.3C. as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

C. (1) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(2) A~~n~~ **[Nonmember A]**attorney ~~who is not a member of the Bar of this State~~ seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(a) the applicant's residence and business address;

(b) the name, address and phone number of each client sought to be represented;

(c) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(d) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(e) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(f) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to

its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(g) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application **[; and**

(h) the date upon which the non-refundable fee set forth in Rule 1.3C(5) was paid to the New Hampshire Bar Association].

~~(8)~~ **[(i)]** In addition, unless this requirement is waived by the district court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(3) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that ~~such admission~~:

(a) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(b) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(c) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(d) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

[(4) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.

(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]

APPENDIX EE

Amend Probate Court Rule 19 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 19. ATTORNEYS - Appearing *Pro Hac Vice*.

(A) An attorney, who is not a member of the Bar of this State [**(a "Nonmember Attorney")]**, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(B) A~~n~~ **[Nonmember A]**attorney ~~who is not a member of the Bar of this State~~ seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (a) has been denied admission pro hac vice in this State; (b) had admission pro hac vice revoked in this State; or (c) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this State within the preceding two years; the date of each application; and the outcome of the application **[; and**

(8) the date upon which the non-refundable fee set forth in Rule 19(E) was paid to the New Hampshire Bar Association].

~~(8)~~ **[(9)]** In addition, unless this requirement is waived by the probate court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(C) The court has discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(1) may be detrimental to the prompt, fair and efficient administration of justice;

(2) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

[(D) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on

contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.

(E) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]